

# **February 28, 2022 Hearing Transcript**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BROWN, ET AL, ) CV-20-3664-YGR  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) FEBRUARY 28, 2022  
)  
GOOGLE LLC, ) PAGES 1-84  
)  
DEFENDANT. ) \*SEALED TRANSCRIPT\*  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SUSAN VAN KEULEN  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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FOR THE DEFENDANT: **BY: ANDREW H. SCHAPIRO**  
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APPEARANCES CONTINUED ON THE NEXT PAGE

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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SAN JOSE, CALIFORNIA

FEBRUARY 28, 2022

P R O C E E D I N G S

(COURT CONVENED AT 1:37 P.M.)

**SEALED TRANSCRIPT OF PROCEEDINGS**

THE COURT: GOOD AFTERNOON, EVERYONE.

WELCOME TO THE DISCOVERY HEARING IN BOTH -- WE WILL HAVE A HEARING IN THE BROWN MATTER AND IN CALHOUN. AND WE ARE GOING TO START WITH BROWN. AND I WILL LET MS. FANTHORPE CALL THAT MATTER IN JUST A MOMENT.

I KNOW WE HAVE A LOT OF COUNSEL HERE, AND CASES LIKE THIS TAKE A LOT OF SUPPORT, AND I THINK EVERYBODY ON THIS CALL APPRECIATES THAT IT IS VERY MUCH A TEAM EFFORT, AND I CERTAINLY APPRECIATE THAT. AND BY ASKING YOU TO TURN OFF YOUR VIDEO, I AM IN NO WAY DISCOUNTING YOUR CONTRIBUTION TO THE EFFORT IN THIS CASE, IT IS JUST SIMPLY UNMANAGEABLE TO SEE EVERYBODY'S FACE AT ONCE ON THE SCREEN, AND I DO LOOK FORWARD TO OUR RETURN TO LIFE PROCEEDINGS, HOPEFULLY IN THE NOT TOO DISTANT FUTURE. BUT FOR NOW, THIS IS THE FORMAT THAT WE HAVE.

SO IF YOU HAVE A SPEAKING ROLE ON THE ISSUES, AS WE WORK THROUGH THEM, OR IF YOU ARE LEAD COUNSEL, FEEL LIKE YOU WANT TO HAVE EYES ON, BE SURE THAT YOUR FACE IS ON THE SCREEN. I LEAVE THAT TO YOUR DISCRETION, AND ASK YOU TO -- YOU MAY CERTAINLY HAVE YOUR VIDEO ON FOR THOSE PURPOSES.

SO WITH THAT, LET'S TRY TO MOVE AHEAD. AND MS. FANTHORPE, IF YOU WILL CALL THE FIRST CASE, PLEASE, AND GET OUR

1 APPEARANCES.

2 THE CLERK: YES.

3 CALLING CASE 20-CV-3664. THIS IS A SEALED PROCEEDING.

4 BROWN, ET AL VERSUS GOOGLE, LLC, ET AL.

5 COUNSEL, PLEASE IDENTIFY YOURSELVES FOR THE RECORD  
6 BEGINNING WITH PLAINTIFF.

7 MS. BONN: GOOD MORNING, YOUR HONOR.

8 AMANDA BONN WITH SUSMAN GODFREY. AND TO TRY TO SAVE TIME,  
9 I'M GOING TO GIVE APPEARANCES FOR MY COLLEAGUES AS WELL.

10 I'M JOINED BY ALEX FRAWLEY FROM SUSMAN GODFREY, BEKO  
11 REBLITZ-RICHARDSON FROM BOIES SCHILLER, MARK MAO FROM BOIES,  
12 JAMES LEE FROM BOIES, ERIKA NYBORG-BURCH FROM BOIES, ROSSANA  
13 BAEZA FROM BOIES.

14 AND FINALLY WE ARE JOINED BY JOHN YANCHUNIS AND RYAN MCGEE  
15 FROM MORGAN & MORGAN.

16 THE COURT: THANK YOU, MS. BONN. WELCOME ALL.

17 AND FOR GOOGLE TODAY, PLEASE.

18 MR. SCHAPIRO: GOOD AFTERNOON, YOUR HONOR.

19 I'M ANDREW SCHAPIRO FROM QUINN EMANUEL FOR GOOGLE. AND  
20 WITH ME TODAY, I HAVE MY COLLEAGUES VIOLA TREBICKA -- I WILL  
21 ASK PEOPLE TO TURN ON THEIR CAMERAS AS I SAY THEIR NAMES, OR  
22 BEFORE. SO VIOLA TREBICKA, JOMAI CRAWFORD, STEPHEN BROOME,  
23 SARA JENKINS, JOSEF ANSORGE.

24 AND YOUR HONOR, OUR HARD WORKING ASSOCIATE, TRACY GAO, WAS  
25 GOING TO BE HANDLING ONE OF THE ISSUES TODAY. I THINK WE HAVE

1 NOT YET GOTTEN HER APPEARANCE ON FILE, BUT I WOULD ASK  
2 PERMISSION TO LET HER ARGUE. WE ARE IN THE PROCESS OF FILING  
3 THE APPEARANCE, BUT IF YOU WOULD RATHER SHE NOT, WE WILL HAVE  
4 SOMEONE ELSE COVER IT.

5 THE COURT: NO, THAT WILL BE FINE. WELCOME, MS. GAO.

6 MS. GAO: THANK YOU, YOUR HONOR.

7 THE COURT: OKAY.

8 MR. SCHAPIRO: OH, YOUR HONOR, I APOLOGIZE, I FORGOT  
9 CARL SPILLY IS ALSO HERE, HE WAS ON THE SECOND PAGE OF MY  
10 SCREEN, ALSO FROM QUINN EMANUEL FOR GOOGLE.

11 THE COURT: EXCELLENT. ALL RIGHT. THANK YOU.

12 THANK YOU ALL.

13 WE ALSO ARE JOINED TODAY BY SPECIAL MASTER DOUGLAS BRUSH.  
14 AND MR. BRUSH, IF YOU WOULD KEEP YOUR VIDEO ON, PLEASE. AND AS  
15 WELL AS MR. SCHMIDT, WHO WORKS WITH MR. BRUSH AND SUPPORTS HIM  
16 IN THE SPECIAL MASTER DUTIES.

17 OKAY. WE WILL -- LET'S START WITH BROWN. I RECEIVED THE  
18 CHART LAST WEEK, AND IT APPEARS TO ME THAT THERE WERE A TOTAL  
19 OF NINE DISPUTES SUBMITTED, THREE OF WHICH WERE HIGHLIGHTED FOR  
20 TODAY'S PROCEEDINGS, THAT'S P22, P24, AND P27. AND THOSE ARE  
21 THE ISSUES THAT I HAVE HAD AN OPPORTUNITY TO REVIEW AND PREPARE  
22 FOR. I HAVE NOT YET LOOKED AT ANY OF THE REMAINING DISPUTES,  
23 AND WE WILL FIGURE OUT WHAT TO DO WITH THAT IN DUE COURSE.

24 I ALSO DID SEE THAT OVER THE WEEKEND, THE BROWN PLAINTIFFS  
25 FILED A MOTION FOR DISCOVERY SANCTIONS RELATING TO THE ISSUE ON

1 THE [REDACTED] AND I AM CONSULTING WITH  
2 JUDGE GONZALEZ ROGERS ON THAT. I APPRECIATE YOU FILED IT  
3 BEFORE ME AND I CERTAINLY EXPECT THEY WILL HANDLE THAT, AND I  
4 WILL SET A BRIEFING SCHEDULE AND A HEARING DATE AGAIN IN DUE  
5 COURSE.

6 BUT I DON'T WANT TO, AND I'M NOT ADDRESSING THOSE ISSUES  
7 HERE TODAY. I HAVE PLAINTIFF'S MOVING PAPERS, I HAVEN'T HEARD  
8 FROM GOOGLE YET, SO I JUST WANT YOU TO KNOW I SEE IT, BUT THAT  
9 WILL NOT BE THE SUBJECT OF TODAY'S DISCUSSIONS.

10 STARTING THEN AT P22, WHICH DOES RELATE TO DISCOVERY  
11 AROUND THE FIELD [REDACTED] AND I UNDERSTAND  
12 THAT ASIDE FROM THE PENDING MOTION, PLAINTIFFS ARE ASKING  
13 FOR -- THEY RAISED A CONCERN ABOUT MR. LEUNG'S DEPOSITION, THE  
14 TIMING OF MR. LEUNG'S DEPOSITION, AND THEY ASK FOR DEPOSITION  
15 AND CUSTODIAL DOCUMENTS OF MS. LIU. AND I THINK THAT'S WHAT  
16 THE ISSUE BOILS DOWN TO.

17 MS. BONN, I WILL START WITH YOU. AND TELL ME WHO HAS THE  
18 MIC ON THIS ONE, PLEASE.

19 MS. BONN: YES, YOUR HONOR.

20 I THINK I HAVE THE MIC ON THIS, ALTHOUGH TWO OF MY  
21 COLLEAGUES, MARK MAO AND RYAN MCGEE, WHO HAVE BEEN A LITTLE BIT  
22 MORE INVOLVED IN THE SPECIAL MASTER PROCESS, ARE HERE IF NEEDED  
23 TO ANSWER TECHNICAL QUESTIONS.

24 I THINK THAT'S RIGHT. AND TO BE CLEAR, I THINK YOU ARE  
25 RIGHT, IT OVERLAPS WITH THE MOTION WE FILED. BUT THE BOTTOM



1 LINE IS THAT ON FEBRUARY 18TH, WE RECEIVED A PRODUCTION OF  
2 MR. LEUNG'S CUSTODIAL DOCUMENTS PURSUANT TO COURT ORDER. AND  
3 THOSE DOCUMENTS INDICATED FOR THE FIRST TIME, THAT GOOGLE HAD  
4 ACTUALLY IMPLEMENTED WHAT THEY SOMETIMES IN THEIR DOCUMENTS  
5 CALL A [REDACTED], SOMETIMES A [REDACTED]  
6 [REDACTED], SOMETIMES [REDACTED], BUT IT HAS ACTUALLY BEEN  
7 BUILT OUT AND IMPLEMENTED IN CERTAIN LOGS.

8 AND THAT RAISED A HOST OF QUESTIONS ON OUR END. THE  
9 THINGS WE'VE ASKED FOR IN THIS BRIEF, NUMBER ONE, WHAT BECAME  
10 CLEAR IS THAT MR. LEUNG WAS WORKING WITH ANOTHER GOOGLE  
11 ENGINEER NAMED MANDY LIU. THEY WERE WORKING HAND IN HAND ON  
12 THE IMPLEMENTATION ON THIS [REDACTED] FIELD. THEY WERE  
13 WORKING HAND IN HAND WITH IMPLEMENTING CHANGES TO GOOGLE'S  
14 LOGIN PRACTICES AND HOW TO THEN BUILD OUT AND SUPPORT A  
15 DASHBOARD, AMONG OTHER THINGS, TO MONITOR AND ANALYZE INCOGNITO  
16 TRAFFIC.

17 AND BECAUSE WE DIDN'T HAVE BURT LEUNG'S DOCUMENTS OR  
18 MANDY LIU'S, WE WERE MISSING A CRITICAL PIECE OF WHAT WAS  
19 REALLY GOING ON. WE DIDN'T GET THAT INSIGHT UNTIL WE SAW  
20 BURT LEUNG DOCUMENTS. BUT WE ARE ALSO CONCERNED THAT BECAUSE  
21 MANDY LIU WAS WORKING ON THIS AS WELL, SHE MAY HAVE DOCUMENTS  
22 THAT SHED LIGHT ON THIS ISSUE THAT WE DON'T HAVE.

23 WE MADE WHAT WE THOUGHT WAS A VERY TARGETED PROPOSAL TO  
24 RUN THE SAME SEARCH TERMS THEY RAN ON MR. LEUNG'S DOCUMENTS. I  
25 THINK BASICALLY IT'S INCOGNITOCHROME GUARD, ONE WORD, AND CHROME

1 GUARD, TWO WORDS, OVER 2019 TO 2021. IN MR. LEUNG'S CASE, IT  
2 RESULTED IN FEWER THAN A THOUSAND HITS.

3 THE COURT: SO MS. BONN, IN THE CHART IN THE PAPERS  
4 THAT YOU ASKED FOR, THE SEARCH TERMS, SAME AS FOR MR. LEUNG, AS  
5 WELL AS SOME OTHERS, OR A FEW OTHERS, WORDS TO THAT EFFECT.  
6 ARE WE PAST THAT, IF YOU GET A SEARCH WITH THE LEUNG DOCUMENTS,  
7 IS THAT --

8 MS. BONN: BOTTOM LINE, IF WE GET THAT, I THINK THAT  
9 THAT WILL GET US WHAT WE NEED. THE FEW OTHERS WE ADDED RELATE  
10 TO THE DASHBOARD THEY BUILT OUT.

11 SO IF THEY HIT ON SOME CRAZY NUMBER OF DOCUMENTS, WE COULD  
12 FOREGO IT. I THINK LAST TIME WHEN THE COURT ISSUED AN ORDER ON  
13 MR. LEUNG'S DOCUMENTS, GOOGLE GAVE US THE HIT COUNTS. AND  
14 BECAUSE IT WAS SO LOW, THEY AGREED TO PRODUCE IT. SO I'M  
15 HOPING THEY JUST TELL US THE HIT COUNTS. IF THE OTHER TERMS  
16 HIT ON SOME CRAZY NUMBER, WE CAN LIVE WITH JUST THE THREE LEUNG  
17 TERMS.

18 AND THEN I THINK WE WOULD LIKE A TWO-HOUR DEPOSITION WITH  
19 HER, NOT TO COUNT AGAINST THE 20 THAT WERE COURT ORDERED,  
20 BECAUSE HAD WE KNOWN ABOUT HER AT THE OUTSET, WE COULD HAVE  
21 ADJUSTED OUR SELECTIONS OF WHO WE WANT TO DEPOSE, BUT NOW WE  
22 ARE IN A POSITION WHERE WE CAN'T GO BACK IN TIME.

23 THE COURT: HAVE YOU USED ALL 20?

24 MS. BONN: NO. AND MY COLLEAGUES CAN SHED LIGHT ON  
25 THIS IF I'M WRONG, BUT I BELIEVE WE'VE USED SOMETHING LIKE 12,

1       THERE ARE OTHERS HAPPENING THIS WEEK, AND IF WE GET MR. PICHAI  
2       AND MS. TWOHILL'S DEPOSITIONS APPROVED AND WE HAVE OUR THREE  
3       30(B)(6)'S, I THINK WE WOULD BE AT OR VERY NEAR THE LIMIT.

4       SO, YOU KNOW, WE DON'T WANT TO TAKE A DEPOSITION AND THEN  
5       HEAR FROM GOOGLE, AH HA, YOU HAVE NOW HIT 20, YOU CAN'T TAKE  
6       PICHAI, EVEN THOUGH WE HAVEN'T GOTTEN A RULING ON THAT YET.

7       SO THAT'S THE POSITION WE ARE IN.

8       THE COURT:    OKAY.

9       YES, MR. MAO?

10       MR. MAO:    SORRY, IF YOU DON'T MIND.

11       IF YOU HAVE QUESTIONS ON THE TOTAL NUMBER OF DEPOSITIONS,  
12       WE DO HAVE THAT AS A SEPARATE DISCOVERY DISPUTE.  BUT I THINK  
13       THE QUICKEST SUMMARY IS PROBABLY GOING TO BE PROVIDED BY MY  
14       COLLEAGUE, BEKO REBLITZ-RICHARDSON.  BUT AGAIN, YOUR COURT,  
15       YOUR SCHEDULE.

16       THE COURT:    OKAY.  WELL, I APPRECIATE YOU'VE ASKED IF  
17       I WERE TO GRANT YOU A DEPO, THAT IT BE OUTSIDE OF THE 20, AND  
18       THAT'S WHAT I WANTED TO KNOW WAS, YOU KNOW, ARE YOU AT THE  
19       LIMIT, AND IT SOUNDS LIKE YOU ARE AT OR CLOSE, DEPENDING ON  
20       SOME OTHER DISPUTE WHICH WE WON'T GET INTO TODAY, BECAUSE I  
21       HAVEN'T LOOKED AT THE SUBMISSIONS ON THAT.

22       OKAY.  ALL RIGHT.  I THINK I UNDERSTAND.

23       MR. SCHAPIRO, FROM GOOGLE'S SIDE, AGAIN WITHOUT UNPACKING  
24       ALL OF THE [REDACTED] ISSUES, A TWO-HOUR DEPO  
25       WITH A LIMITED TIME AND LIMITED IN TERMS SEARCH, IN LIGHT OF

1 THIS, AND I APPRECIATE IT'S DISPUTED WHEN THE TERM CAME TO  
2 LIGHT, BUT IN LIGHT OF THE LEUNG PRODUCTION, I WOULD ALSO LIKE  
3 TO KNOW WHAT IS UP WITH MR. LEUNG AND GETTING HIS DEPOSITION  
4 SCHEDULED. HE'S AT AN IMPORTANT PART IN THIS CASE, AND I THINK  
5 IT'S UNDERSTANDABLY FRUSTRATING THAT HE'S BEEN PUSHED TO  
6 FRIDAY. SO IS THERE A REALLY GOOD REASON WHY HE CAN'T GO  
7 SOONER?

8 MR. SCHAPIRO: YEAH, SURE.

9 THE COURT: WHY DON'T WE START THERE.

10 MR. SCHAPIRO: OF COURSE. AND I WILL START WITH THE  
11 LAST ONE.

12 I CAN REPRESENT AS AN OFFICER OF THE COURT THAT  
13 MR. LEUNG'S DEPOSITION DATE WAS NOT CHANGED BASED ON ANYTHING  
14 HAVING TO DO WITH THE INQUIRIES ABOUT [REDACTED]

15 AND AS WE EXPLAINED IN OUR -- I WILL TELL YOU WHAT IT'S  
16 ABOUT IN A MOMENT. BUT AS INDICATED IN OUR CHART, WE FIRST  
17 PROPOSED FEBRUARY 25TH FOR MR. LEUNG BACK ON JANUARY 11TH. AND  
18 THIS COURT HAD ORDERED PLAINTIFFS TO CONFIRM DEPOSITION DATES  
19 WITHIN 48 HOURS, WHICH IS A RULE THAT HAS BEEN HONORED IN THE  
20 BREACH, YOUR HONOR, IT'S REALLY BEEN AN EXCEPTION TO THE RULE,  
21 THINGS HAVE NOT BEEN GOING THAT WAY, BUT IT HAS RARELY BECOME  
22 AN ISSUE.

23 THEY DIDN'T DO SO, AND ON FEBRUARY 21ST WE TOLD THEM THAT  
24 HE IS NO LONGER AVAILABLE ON THAT DATE. WE OFFERED A DATE  
25 STILL WITHIN THE DISCOVERY PERIOD, WHICH IS MARCH 4TH. THE

1 REASON FOR IT, AND IT IS SORT OF BUSINESS REASON, IS THAT  
2 THERE'S WHAT'S CALLED [REDACTED]

3 [REDACTED] -- EVERYTHING IS SEALED HERE, CORRECT?

4 THE COURT: YES, SIR.

5 MR. SCHAPIRO: [REDACTED]

6 [REDACTED]  
7 [REDACTED] AND SO THAT WAS -- THAT  
8 IS THE REASON THAT FEBRUARY 25TH BECAME UNAVAILABLE. AND SO  
9 HE'S AVAILABLE DURING --

10 THE COURT: WHEN DID THIS [REDACTED] GO INTO EFFECT,  
11 MR. SCHAPIRO.

12 MR. SCHAPIRO: MY UNDERSTANDING -- I LEARNED ABOUT IT  
13 A DAY OR TWO BEFORE -- THE DAY BEFORE WE TOLD THE PLAINTIFFS  
14 THAT WE COULD NO LONGER DO FEBRUARY 25TH.

15 SO -- AND I WOULD ALSO ARGUE THAT EVEN IF THERE WEREN'T A  
16 BUSINESS EMERGENCY THAT MADE THE 25TH A DIFFICULT DATE, WE ARE  
17 ENTITLED TO PUT UP WITNESSES ON DATES THAT ARE CONVENIENT TO  
18 THE WITNESSES DURING THE DISCOVERY PERIOD.

19 IT WOULD BE DIFFERENT IF WE CAME BACK AND SAID,  
20 YOUR HONOR, WE NEED MARCH 14TH, OR SOMETHING LIKE THAT.

21 SO THAT'S THE EXPLANATION. THERE'S NOTHING NEFARIOUS,  
22 CONTRARY TO THE -- ARISING IN THE SPOILIATION MOTION, HAS  
23 NOTHING TO DO WITH [REDACTED].

24 I WANT TO ADDRESS, IF I MAY, THE REQUEST FOR TIME WITH  
25 MS. LIU, BECAUSE YOU SAID A MOMENT AGO, YOUR HONOR, YOU KNOW,

1 THAT IT'S DISPUTED WHEN SHE OR THEY LEARNED ABOUT THIS. BUT I  
2 DON'T THINK IT CAN BE REASONABLY DISPUTED. AND WE'VE  
3 IDENTIFIED THE DOCUMENTS IN OUR CHART. THE PLAINTIFFS HAVE HAD  
4 INFORMATION ABOUT NOT ONLY THIS FIELD, BUT MS. LIU'S  
5 INVOLVEMENT IN THE [REDACTED] PROJECT  
6 FOR MONTHS, INCLUDING DESIGN DOCUMENTS THAT WERE OFFERED BY HER  
7 THAT WERE PRODUCED IN AUGUST AND SEPTEMBER OF LAST YEAR.

8 SO IF THEY WANT TO TAKE HER DEPOSITION, THAT'S OKAY, BUT  
9 WE ARE TRYING TO BRING THIS PROCESS TO AN END. EVERY  
10 DEPOSITION IS A LOT OF WORK FOR US AND FOR THE CLIENT, AND SO  
11 IT SHOULD COUNT WITHIN THEIR LIMITS.

12 THEY CAN CHOOSE WHETHER IT'S IMPORTANT, BUT THERE'S BEEN  
13 NO LAST MINUTE DEVELOPMENT, AT LEAST DIFFERENT FROM THERE IS IN  
14 ANY TYPICAL CASE WHERE THERE ARE A LOT OF DOCUMENTS. AND AS  
15 THE CASE GOES ON, PEOPLE MIGHT NOTICE SOMETHING THAT THEY  
16 DIDN'T NOTICE BEFORE THAT WOULD JUSTIFY BREAKING THE LIMITS  
17 HERE THAT YOU THOUGHTFULLY SET ON THE NUMBER OF DEPOSITIONS.

18 THE FINAL THING THAT MAY GET -- I GUESS I DON'T NEED TO  
19 ADDRESS IT BECAUSE YOUR HONOR DOESN'T NEED TO HEAR IT, IS SOME  
20 OF THE SUBSTANCE ABOUT THIS, BUT I GATHER THAT WE WILL HAVE A  
21 CHANCE TO TALK ABOUT THAT IN THE BRIEFING. LET ME SAY FOR THE  
22 RECORD, WE VIGOROUSLY DISPUTE THE ACCOUNT THAT IS PAINTED IN  
23 THE SPOILIATION BRIEF THAT HAS BEEN SUBMITTED BY THE PLAINTIFFS.

24 I THINK ONE POSSIBILITY, I KNOW YOUR HONOR DID THIS IN  
25 OCTOBER WHEN THE PLAINTIFFS, IN OUR VIEW, PREMATURELY CAME IN

1 FOR SEEKING SANCTIONS, YOUR HONOR STAYED IT INDEFINITELY. WE  
2 DO HAVE THE DEPOSITION OF MR. LEUNG COMING UP ON FRIDAY, THAT  
3 THEY WILL BE ABLE TO ASK A LOT OF QUESTIONS ABOUT THIS, AND I  
4 THINK THEY WILL BE DISABUSED OF SOME OF THE MORE SINISTER  
5 READINGS THAT WE SEE IN A SPOLIATION BRIEF.

6 SO ONE OPTION, IF YOUR HONOR WERE WILLING, WOULD BE TO  
7 SIMPLY STAY THE BRIEFING, PERHAPS INDEFINITELY, UNTIL WE SEE  
8 WHAT COMES OUT OF MR. LEUNG'S DEPOSITION.

9 IN THE ALTERNATIVE, YOU KNOW, OF COURSE WE WILL BRIEF IN  
10 THE DUE COURSE.

11 THE COURT: OKAY. ALL RIGHT. THANK YOU.

12 OKAY. HERE'S HOW WE WILL PROCEED, MR. LEUNG WILL BE  
13 DEPOSED. IS IT CORRECT, MS. BONN, THAT THERE WASN'T A RESPONSE  
14 IN 48 HOURS FROM --

15 MS. BONN: NO, YOUR HONOR.

16 THE COURT: EXCUSE ME, LET ME FINISH, FROM --

17 MS. BONN: SORRY.

18 THE COURT: FROM WHEN THE FEBRUARY 25TH DATE WAS  
19 OFFERED?

20 MS. BONN: NO, I DON'T THINK THAT'S CORRECT,  
21 YOUR HONOR.

22 WE DID CONFIRM PROMPTLY IN JANUARY. WE SET THE  
23 FEBRUARY 25TH DATE, BUT WE ALWAYS INDICATED THAT WE NEEDED TO  
24 ENSURE HIS DOCUMENTS WERE COMPLETE BEFOREHAND.

25 AND IN FACT, PRIOR TO GOOGLE AGREEING TO MAKE THE

1 PRODUCTION OUT OF THE 982 HITS, GOOGLE'S COUNSEL CALLED  
2 MR. FRAWLEY, WHO IS ON THE LINE, TO REACH AN AGREEMENT ABOUT  
3 THE PRODUCTION AND SAID, WE WILL AGREE TO PRODUCE THESE  
4 DOCUMENTS WITHOUT HAVING TO GO THROUGH ANOTHER ROUND OF  
5 BRIEFING, IF YOU WILL CONFIRM THAT THE FEBRUARY 25TH DATE IS  
6 STILL ON AND YOU ARE NOT GOING TO TRY TO PUSH THAT DATE.

7 SO, I MEAN, WE WERE GETTING CALLS FROM GOOGLE'S COUNSEL  
8 ASKING US TO CONFIRM THAT DATE AS A PRECONDITION TO PRODUCING  
9 THE DOCUMENTS, WHICH WE DID.

10 MR. SCHAPIRO: YOUR HONOR, I HAVE A COLLEAGUE WHO CAN  
11 RESPOND TO THAT, BECAUSE WE DISAGREE.

12 THE COURT: I UNDERSTAND. TWO SIDES TO EVERY STORY.

13 BUT BE THAT AS IT MAY, MR. LEUNG WILL BE DEPOSED THIS  
14 WEEK, NOT LATER THAN MARCH 4TH, AND IF THAT'S THE AGREED DATE,  
15 THAT'S WHEN IT WILL GO FORWARD.

16 I WILL ALLOW A DEPOSITION OF MS. LIU, ALONG WITH A SEARCH  
17 OF HER DOCUMENTS, FOR THE LIMITED TIME PERIOD OF 2019 TO 2021,  
18 USING THE SAME SEARCH TERMS AS WERE USED FOR MR. LEUNG.

19 THOSE DOCUMENTS ARE TO BE SEARCHED AND PRODUCED NO LATER  
20 THAN MARCH 2ND, AND THE WITNESS IS TO BE MADE AVAILABLE FOR  
21 DEPOSITION NO LATER THAN MARCH 7TH, MARCH 7TH.

22 THAT'S AS FAR AS I'M WILLING TO GO, IN TERMS OF EXTENDING  
23 A DEADLINE.

24 MR. SCHAPIRO: AND YOUR HONOR, WHEN YOU SAID YOU WILL  
25 ALLOW A DEPOSITION, DOES THAT MEAN YOU WILL ALLOW IT OUTSIDE OF



1 THE 20?

2 THE COURT: JUST WHAT I'M COMING TO, MR. SCHAPIRO.

3 MR. SCHAPIRO: OKAY. THANK YOU.

4 THE COURT: SINCE I HAVE NOT HAD AN OPPORTUNITY TO  
5 WORK THROUGH WHATEVER OTHER THAN DEPOSITION COUNT ISSUES ARE,  
6 THAT DEPOSITION, THAT TWO-HOUR DEPOSITION WILL NOT COUNT TO THE  
7 20.

8 OKAY.

9 MR. SCHAPIRO: CAN I COME BACK WITH ONE OTHER REQUEST  
10 THEN?

11 CAN WE ASK THEN THAT BURT LEUNG BE FIVE HOURS AND MS. LIU  
12 BE TWO HOURS SO THAT IT'S THEN THE EQUIVALENT OF ONE DEPOSITION  
13 ON THIS TOPIC?

14 THE COURT: NO, MR. SCHAPIRO. DENIED.

15 OKAY. WE ARE NOT GOING TO RESET THE MR. LEUNG ISSUES.

16 ALL RIGHT. P24, THIS IS A DISPUTE WHICH WAS PHRASED AS  
17 SPECIAL MASTER PROCESS AND DEADLINES.

18 THE PARTIES HAVE A DISPUTE ABOUT THE TIMELINE AND  
19 DEADLINES FOR DATA PRODUCTION. I THINK EVERYBODY ON THIS CALL  
20 CAN SURMISE THAT WHEN I READ THE NATURE OF THAT DISPUTE, MY  
21 NEXT MOVE WAS TO PICK UP THE PHONE TO SPECIAL MASTER BRUSH AND  
22 ADDRESS SOME OF THESE ISSUES.

23 AND I WORKED WITH THE SPECIAL MASTER OVER THE WEEKEND ON  
24 REALLY TRYING TO HONE WHAT THE ISSUES WERE AND WHAT NEEDED TO  
25 BE DONE, WITH A CAREFUL EYE ON THE CLOCK THAT IS RUNNING, AND

1 HENCE THE REQUEST THAT YOU RECEIVED FROM SPECIAL MASTER BRUSH  
2 FOR A CONFERENCE THIS MORNING WITH YOUR EXPERTS, WHICH I  
3 UNDERSTAND TOOK PLACE AND WAS PRODUCTIVE.

4 WHERE I WANT AND WHERE WE WILL END UP IN RESPONSE TO P24,  
5 IS WITH A DATE CERTAIN FOR COMPLETION OF A DREML SEARCH AND  
6 PRODUCTION, WHICH HOPEFULLY WILL BE BY MARCH 4TH, BUT I  
7 UNDERSTAND THAT THAT IS BEING DISCUSSED, AS WELL AS A DATE  
8 CERTAIN FOR A LIMITED AND FOCUSED HISTORICAL SEARCH USING THE  
9 FLUME TOOL, AND THAT THAT SEARCH WILL ALSO BE COMPLETED ON A  
10 DATE CERTAIN.

11 AND THAT'S WHERE WE ARE HEADED. WHAT THOSE TWO DATES ARE,  
12 I UNDERSTAND IS PART OF THE PROCESS THAT IS BEING WORKED  
13 THROUGH WITH SPECIAL MASTER BRUSH WITH A FURTHER DISCUSSION,  
14 FURTHER CONFERENCE TO TAKE PLACE TOMORROW.

15 MR. BRUSH, DO I HAVE THAT RIGHT?

16 MR. BRUSH: YES, YOUR HONOR.

17 THE COURT: THANK YOU.

18 ANY QUESTIONS ON PROCEEDING IN THAT MANNER? MR. MAO, YOU  
19 ARE THOUGHTFULLY RAISING YOUR HAND, BOTH ELECTRONICALLY AND  
20 PHYSICALLY, WHICH ACTUALLY IS A BETTER WAY TO GET MY ATTENTION.  
21 YOU MAY BE HEARD BRIEFLY, AND THEN OF COURSE I WILL HEAR FROM  
22 GOOGLE.

23 MR. MAO: YES. THANK YOUR HONOR. JUST A LOT OF  
24 PEOPLE ON THE PANEL.

25 THE COURT: YES.

1 MR. MAO: SO WE CERTAINLY APPRECIATE MR. BRUSH'S  
2 ASSISTANCE, AND THERE IS ONE ISSUE THAT'S POPPED UP,  
3 PARTICULARLY WITH REGARD TO HOW IT RELATES TO P22, WHICH IS  
4 WHAT MS. BONN HAD JUST ARGUED IN FRONT OF YOU, WHICH IS THAT  
5 THERE ARE A NUMBER OF UNDISCLOSED, PREVIOUSLY UNDISCLOSED [REDACTED]  
6 [REDACTED] AND [REDACTED] LOG SOURCES WHICH HAVE NOT  
7 BEEN IDENTIFIED BY GOOGLE IN WHICH WE HAVE SINCE ASKED FOR  
8 THEIR IDENTIFICATION, AND ALSO FOR THEIR FIELDS AND SCHEMA,  
9 WHICH YET, TO THIS DAY, STILL HAS NOT BEEN PRODUCED. AND I  
10 HOPE YOUR HONOR CAN SEE THE RELEVANCE OF THAT TO THIS CASE.

11 AND IN TERMS OF THE DREML AND ALSO THE FLUME SEARCHES FOR  
12 HISTORICAL DATA, THAT IS CERTAINLY GOING TO BE RELEVANT AND  
13 IT'S CERTAINLY GOING TO BE IMPORTANT.

14 AND WE DO BELIEVE THAT WE ARE ENTITLED TO A FULSOME  
15 PRODUCTION OF NOT JUST THE LOG SCHEMAS, THAT THOSE SCHEMAS  
16 SHOULD CONTAIN THE FULL FIELDS.

17 I UNDERSTAND GOOGLE HAS ARGUED THAT WHEN THEY USE THE  
18 FRONT DOOR TOOL TO PRODUCE FIELD SCHEMAS, THAT WILL PRODUCE  
19 SOMETHING THAT'S JUST A HUNDRED FIELDS AND THAT IS IT, AND  
20 THAT'S SIMPLY UNTRUE.

21 ONE THING I WOULD POINT TO, YOUR HONOR, IN THE PAST, IS IF  
22 YOU LOOK AT THEIR [REDACTED] LOG PRODUCTION AND THEIR [REDACTED]  
23 [REDACTED] PRODUCTION ON THE SCHEMAS BACK IN NOVEMBER, THE  
24 TOTAL FIELDS PRODUCED WAS [REDACTED] THERE'S NO REASON -- I THINK IT  
25 WAS [REDACTED] AND THEN FOR THE [REDACTED], IT WAS

1 [REDACTED]  
2 AND THEN IN DECEMBER WHEN THEY PRODUCED THE LOGS FOR  
3 [REDACTED], IT WAS [REDACTED] SO WE HAVE THREE LOG SOURCES WHICH WERE  
4 PRODUCED WHICH SUBSTANTIALLY DIFFER FROM THE [REDACTED] IN WHICH THEY  
5 ARE REPRESENTING THAT THEY CAN ONLY PRODUCE.

6 AND AS WE'VE DISCUSSED IN P22, THE ONE FIELD THAT WAS  
7 OMITTED THROUGH THIS ARTIFICIAL FILTERING OF [REDACTED] WAS INDEED THE  
8 [REDACTED] FIELD FROM ONE OF THE CRITICAL LOGS.

9 SO THAT'S A PRETTY BIG ISSUE, YOUR HONOR, IN TERMS OF IT  
10 BEING AN OBSTACLE FOR US TO GO FORWARD, AND WE WOULD LIKE TO  
11 RESPECTFULLY REQUEST SOME MOVEMENT ON THAT.

12 AND THEN THE SECOND THING, JUST REAL BRIEFLY YOUR HONOR,  
13 IS THAT IT'S COME TO OUR ATTENTION FROM THE JOINT PROCEEDINGS  
14 WITH THE CALHOUN FOLKS, THAT GOOGLE DID RETAIN SOME DATA FOR AT  
15 LEAST THE CALHOUN PLAINTIFFS, HISTORICAL DATA FROM THE CALHOUN  
16 PLAINTIFFS, PRIOR TO THE LITIGATION WHEN THE LITIGATION BEGAN.

17 IT IS UNCLEAR, AND WE'VE ASKED AND GOOGLE HAS NOT YET  
18 RESPONDED, AS TO WHETHER OR NOT THEY HAVE DONE THE SAME FOR OUR  
19 PLAINTIFFS. AND IT IS UNCLEAR IF THEY ARE HOLDING ANYTHING  
20 BACK AND IF WHAT WITH THEY HELD BACK -- AND IF THERE IS SOME  
21 TYPE OF OBJECTION ON RELEVANCE, THEN WE HAVE SERIOUS QUESTIONS  
22 REGARDING IF IT'S NOT RELEVANT, WHY WAS IT PRESERVED IN THE  
23 FIRST PLACE.

24 THE REASON WHY THAT COMES UP AS PART OF P24, YOUR HONOR,  
25 IS BECAUSE YOU CAN IMAGINE IF THOSE ARE AVAILABLE SOURCES,

1 THOSE MIGHT BE ADDITIONAL SOURCES TO BE SEARCHED, AND WE DO  
2 HAVE QUESTIONS REGARDING WHEN THAT WAS HELD BACK.

3 SO WITH THAT, YOUR HONOR, THOSE WERE MY MAIN ISSUES ON P24  
4 FOR NOW.

5 MR. SCHAPIRO: YOUR HONOR, IF NECESSARY, MY COLLEAGUE  
6 TRACY GAO CAN RESPOND TO THAT, BUT I THINK THAT THIS IS AN  
7 ISSUE, TO THE EXTENT I UNDERSTOOD WHAT THE ASK WAS, AND I MAY  
8 NOT HAVE, THAT IS WITHIN THE PURVIEW OF THE SPECIAL MASTER.

9 IF YOU WANT US TO GET INTO THE POINT BY POINT RESPONSE,  
10 MS. GAO WILL BE HAPPY TO DO THAT. BUT AS FAR AS I UNDERSTOOD  
11 IT, THIS IS SOMETHING THAT IS A TECHNICAL SPECIAL MASTER ISSUE,  
12 AND THAT'S NOT PRESENTED WITH THIS PARTICULAR ASK IN THE CHART.

13 THE COURT: WHAT I UNDERSTOOD MR. MAO -- TO THE  
14 POINT, MR. MAO, YOU WERE TRYING TO MAKE WAS, FINE, IF THERE'S  
15 GOING TO BE DATES SET FOR A DREML PRODUCTION AND A FLUME  
16 PRODUCTION, WE WANT TO BE SURE THAT IT INCLUDES THE [REDACTED]  
17 [REDACTED] FIELDS. AND THAT IS A -- AS WE ALL KNOW FROM THE  
18 PATHS TROD IN THIS CASE, THAT'S POTENTIALLY A BIG DEAL AND A  
19 BIG ASK, AND I DO EXPECT THAT TO BE ADDRESSED BEFORE SPECIAL  
20 MASTER BRUSH.

21 I WANT TO COME BACK TO THE HISTORICAL DATA IN JUST A  
22 MOMENT. BUT MR. BRUSH, HAVING HEARD WHAT MR. MAO HAS TO SAY,  
23 MY QUESTION IS JUST, IS THERE ANYTHING THAT THE COURT CAN DO  
24 TODAY TO CLARIFY? DO YOU HAVE ANY QUESTIONS, OR DO YOU SEE  
25 THIS AS PART OF THE FURTHER DISCUSSIONS THAT WILL CONTINUE

1 BEFORE YOU TOMORROW WITH THE EXPERTS?

2 MR. BRUSH: WELL, YOUR HONOR, I HOPE IT IS SOMETHING  
3 THAT DOES CONTINUE. AND FROM WHAT WE'VE HAD DISCUSSIONS WITH  
4 PARTIES ON, IS THAT THE PEOPLE BEING DEPOSED THIS WEEK ARE --  
5 TO GO BACK TO P22, WERE THE BEST INDIVIDUALS TO ANSWER SPECIFIC  
6 QUESTIONS ABOUT THESE FIELDS AND HOW THEY ARE PUT TOGETHER  
7 WITHIN THE DATA SOURCES.

8 MY HOPE IS CONTINUING THIS WEEK, IF WE ALSO GET SOME OTHER  
9 INFORMATION ABOUT IT, THAT WILL HELP REFINE AND ROUND OFF ANY  
10 EDGES ABOUT THESE FIELDS AS THE INDIVIDUALS BEING DEPOSED ARE  
11 PRESENTED WITH THE QUESTIONS SO IT COULD BE MORE MEANINGFUL.  
12 SO I THINK THERE'S A LOT WORKING IN TANDEM AT THIS POINT.

13 I WOULD ASK THAT PARTIES DO CONTINUE TO WORK AROUND THIS  
14 ISSUE AND WORK PARALLEL WITH OTHER AREAS OF SEARCHING. AND AS  
15 WE LOOK FOR PARTIES TO WORK TOGETHER WITH THEIR EXPERTS, THAT  
16 TO THE EXTENT THAT WE CAN ANSWER QUESTIONS ON THESE, GREAT,  
17 WITH INDIVIDUALS THAT HAVE SOME KNOWLEDGE. I DON'T WANT TO  
18 ALSO PUT EXPERTS OR ENGINEERS ON THE GOOGLE SIDE IN THE HOT  
19 SEAT OF ANSWERING QUESTIONS THAT THEY ARE NOT WITHIN THEIR  
20 SCOPE OR CAPABILITIES OF ANSWERING ABOUT THESE SPECIFIC AREAS  
21 OR HAVE TO BE GUESSING WHERE WE THEN HAVE TO UNDUE THINGS.

22 SO WITH ALL OF THAT, MY HOPE IS THAT WE CAN CONTINUE TO  
23 WORK ON THE SEARCH ISSUES IN PARALLEL WITH THIS AND THIS DOES  
24 NOT BECOME SOMETHING THAT CREATES A HURDLE TO MOVING FORWARD.

25 THAT'S NOT -- MY IMPRESSION IS THAT WE CAN CONTINUE TO

1 WORK ON THESE ISSUES AND THESE FIELDS CAN BE ADDED IN  
2 THROUGHOUT THIS WEEK AS WE FURTHER REFINE THE SEARCHES. BUT I  
3 DO WANT THE OTHER SEARCHES TO CONTINUE TO MOVE FORWARD.

4 THE COURT: OKAY. EXCELLENT.

5 LET ME -- AND THIS WAS VERY MUCH -- THANK YOU, SPECIAL  
6 MASTER BRUSH.

7 AND THAT REFLECTS VERY MUCH THE SUBSTANCE OF THE  
8 CONVERSATIONS I HAVE CONTINUED TO HAVE WITH THE SPECIAL MASTER  
9 THROUGHOUT THIS PROCESS, WHICH IS THAT THE PARTIES MUST BE ABLE  
10 TO MOVE FORWARD ON MULTIPLE TRACKS.

11 AND WE ARE GOING TO -- THE PROCESS BEFORE THE SPECIAL  
12 MASTER ON MANAGING AND CLOSING OUT THE DREML AND FLUME SEARCH  
13 OR SEARCHES WILL PROCEED. THERE WILL BE A DEPOSITION OF  
14 MR. LEUNG THIS WEEK, A DEPOSITION OF MS. LIU EARLY NEXT WEEK,  
15 IF NOT SOONER, AND THAT MAY FURTHER INFORM THE PROCESS. BUT IT  
16 CERTAINLY -- THOSE WILL NOT HOLD UP THAT PROCESS AT ALL, AND WE  
17 WILL PROCEED. OKAY.

18 WITH REGARDS TO HISTORICAL DATA, MR. SCHAPIRO, IS THERE --  
19 DOES GOOGLE HAVE DATA THAT IT PULLED AND RETAINED FOR THE BROWN  
20 PLAINTIFFS, THAT IS THE NAMED PLAINTIFFS?

21 YOU ARE ON MUTE.

22 MR. SCHAPIRO: I APOLOGIZE. I WAS MUTED.

23 DATA IN WHAT FORM, YOUR HONOR? DATA THAT HAS -- SORRY.  
24 I'M NOT SURE I UNDERSTOOD THE QUESTION.

25 THE COURT: OKAY. LET ME TURN TO SPECIAL MASTER

1 BRUSH, BECAUSE I KNOW HE HAD ALERTED ME TO THIS ISSUE.

2

3 MR. BRUSH: YES, YOUR HONOR.

4 I BELIEVE IN THE CALHOUN MATTER, AND MR. MAO'S REFERENCES  
5 PRIOR WAS THERE WERE POTENTIAL PRODUCTIONS THAT WERE EITHER  
6 GENERATED AND NOT PRODUCED FROM A SUBSET OF SEARCH DATA FOR  
7 NAMED PLAINTIFFS ACROSS BOTH MATTERS. WHAT WE WANTED TO HAVE  
8 AN UNDERSTANDING OF, AND WHAT I THINK I ASKED EARLIER TODAY IN  
9 THE MEET AND CONFERS, WAS THE STATE OF THAT DATA. WAS THIS  
10 DATA THAT WAS PRESERVED IN A POST-SEARCH FORMAT THAT COULD BE  
11 EASILY PRODUCED THAT COULD HELP REDUCE SOME OF THE DUPLICATIVE  
12 CYCLES OF THE DISCOVERY PROCESS? WAS THIS DATA THAT WAS  
13 PRESERVED IN ANOTHER SEARCH MANNER THAT WE WOULD STILL HAVE TO  
14 GO BACK AND SEARCH ANOTHER WAY?

15 BUT I GUESS THERE WAS SOME CLARITY THAT THE COURT AND  
16 PARTIES NEED ABOUT WHAT EXACTLY WAS THE SEARCH DATA THAT WAS  
17 DONE ON THE ONSET OF THIS MATTER THAT MIGHT BE AVAILABLE AND  
18 POTENTIALLY HELPFUL IN THE DISCOVERY PROCESS.

19 MR. SCHAPIRO: SO YOUR HONOR, AND SPECIAL MASTER  
20 BRUSH, I HAD UNDERSTOOD THIS TO BE PART OF THE CALHOUN FIRST  
21 PRIORITY ISSUE, BUT I THINK I UNDERSTAND WHAT THE QUESTION IS  
22 NOW.

23 SO I THINK AT THE END OF THE SESSION THIS MORNING, WE WERE  
24 TALKING ABOUT DATA THAT HAS BEEN PRESERVED. YOU WILL RECALL,  
25 YOUR HONOR, AT THE OUTSET OF THIS CASE, I THINK IT WAS OUR



1 FIRST APPEARANCE IN FRONT OF YOU, THERE WAS KIND OF A FIRE  
2 DRILL ABOUT THE QUESTION ABOUT WHETHER WE ARE OBLIGATED TO  
3 SUSPEND NORMAL RETENTION POLICIES RELATING TO LOGS. AND THE  
4 COMPROMISE THAT CAME OUT OF THAT WAS THAT WE WOULD PRESERVE  
5 CERTAIN DATA IN LOGS THAT WAS RELATED TO CERTAIN IDENTIFIERS  
6 THAT WERE PROVIDED TO US OR IDENTIFIERS FROM THE PLAINTIFFS,  
7 WITH AN UNDERSTANDING THAT, I THINK AS YOUR HONOR EMPHASIZED  
8 RIGHT AT THE BEGINNING, MERE PRESERVATION DOES NOT MEAN  
9 NECESSARILY PRODUCTION.

10 AND FROM THAT VERY WIDE FUNNEL, WE AFTERWARDS WENT TO THE  
11 SMALLER FUNNEL, OR WE TRIED TO GET TO THE SMALLER FUNNEL  
12 THROUGH THE VERY SIGNIFICANT AND I THINK HELPFUL EFFORTS OF THE  
13 SPECIAL MASTER, SPECIAL MASTER BRUSH, SO THAT WHAT WE HAVE BEEN  
14 DOING SINCE THAT TIME IS THEY WERE TOLD, AND IT'S PART OF THE  
15 SPECIAL MASTER PROCESS, TO CHOOSE SPECIFIC SEARCHES FOR  
16 SPECIFIC FIELDS TO BALANCE PROPORTIONALITY.

17 AND WE HAVE HAD ALL OF THESE MEETINGS. SO THERE ARE --  
18 THERE IS -- IT IS CERTAINLY TRUE THAT THERE'S A BROADER SET OF  
19 PRESERVED DATA THAN THERE HAS BEEN PRODUCED DATA. I AM NOT  
20 SURE, WITH REGARD TO BROWN, AGAIN WE FOCUSED ON CALHOUN, WHAT  
21 WE HAVE IN TERMS OF COOKIES THAT WERE PRESERVED. AND MAYBE WE  
22 CAN FOLLOW UP WITH THE SPECIAL MASTER TOMORROW, BECAUSE I  
23 WOULDN'T WANT TO MISSTATE THAT THERE IS A UNIVERSE LIKE THIS IN  
24 BROWN SUCH AS THERE IS IN CALHOUN.

25 MR. BRUSH: MAY I JUST CLARIFY, MR. SCHAPIRO, WHAT WE

1 WERE DISCUSSING, AND IT IS A BIT OF A CONFUSING SET OF  
2 TERMINOLOGY THROUGHOUT THE PROCESS WHERE I THINK THE WORD  
3 "PRESERVATION" IS APPLIED IN TWO DIFFERENT AREAS.

4 WHAT I THINK WHAT WE ARE LOOKING FOR, THINGS THAT WERE  
5 SEARCHED IN THAT SUBSET OF SEARCH DATA WAS PUT SOMEWHERE, LET'S  
6 SAY PRESERVED IN THAT MANNER, NOT NECESSARILY ON A LITIGATION  
7 HOLD OF PRESERVED RAW DATA, THE TOP PART OF THE FUNNEL, BUT  
8 ACTUAL THINGS THAT WERE SEARCHED, AND IT MAY NOT HAVE BEEN  
9 PRODUCED.

10 I THINK EVERYBODY WAS LOOKING FOR CLARITY ON WHETHER THERE  
11 WAS INFORMATION THAT MIGHT BE RELEVANT IN THE RESPECTIVE MATTER  
12 THAT MIGHT BE AVAILABLE NOW THAT COULD REDUCE THE NEED TO  
13 RE-SEARCH DATA. AND THAT WAS THE ONLY THING I THINK WE WANTED  
14 CLARITY ON.

15 MR. SCHAPIRO: YES.

16 SO I THINK AS TO BROWN, I WOULD NEED TO COME BACK ON THAT.  
17 WITH CALHOUN, THERE IS DATA, I DON'T KNOW IF I WOULD REALLY  
18 CALL IT SEARCHED, BUT THERE IS DATA THAT IS KEYED OFF OF  
19 CERTAIN ID'S THAT WERE PROVIDED, AND THAT DATA WAS PRESERVED.  
20 IT HASN'T BEEN -- AT LEAST THE DATA THAT'S BEEN OUTSIDE OF YOUR  
21 PROCESS, MR. BRUSH, HASN'T BEEN REVIEWED OR AT LEAST REVIEWED  
22 IN ANY CAREFUL WAY.

23 BUT AGAIN, I DON'T THINK, THE GOAL OF THE QUESTION IS,  
24 WELL, COULD THIS SAVE US EFFORT, I THINK THE ULTIMATE RESULT OF  
25 PRODUCING THIS SET OF SOMEWHAT ROUGH DATA WOULD BE ACTUALLY TO

1 TAKE US BACKWARDS, WE ARE SORT OF AT THE END OF THE PROCESS  
2 HERE, AND THAT'S TAKING US BACK UP TO THE WIDE FUNNEL.

3 AND I THINK THE WHOLE REASON THAT WE'VE BEEN IN FRONT OF  
4 YOU AND MR. SCHMIDT FOR WHAT I THINK HAVE BEEN A PRODUCTIVE  
5 SERIES OF MEETINGS, IS TO CHOOSE SPECIFIC SEARCHES FOR SPECIFIC  
6 FIELDS, AND FROM THOSE, THEN TO COME UP WITH ADDITIONAL  
7 SEARCHES CHOOSING ADDITIONAL FIELDS.

8 THIS, IN OUR VIEW, AND I'M PREVIEWING THE CALHOUN ARGUMENT  
9 HERE, YOUR HONOR, WOULD I THINK TAKE US BACKWARDS AT THIS POINT  
10 IN THE WEEK THAT DISCOVERY IS CLOSING.

11 THE COURT: OKAY.

12 WELL, REGARDLESS OF WHETHER IT'S FORWARD OR BACKWARDS,  
13 BECAUSE I THINK THAT IS SOMEWHAT OF A SUBJECTIVE VIEW,  
14 OBVIOUSLY, DEPENDING ON WHICH SIDE YOU ARE ON, MR. SCHAPIRO, I  
15 WANT YOU TO FOLLOW UP WITH YOUR TEAM AND YOUR TECHNICAL EXPERTS  
16 AS TO WHETHER THERE IS A SET OF DATA, I THINK AS SPECIAL MASTER  
17 BRUSH REFERRED TO IT, POST-SEARCH DATA THAT RELATES TO THE  
18 BROWN PLAINTIFFS THAT HAS BEEN IDENTIFIED BUT NOT PRODUCED.

19 I'M USING THE WORD "IDENTIFIED" INSTEAD OF "PRESERVED,"  
20 BUT -- AND BE PREPARED TO INFORM ON THAT TO THE SPECIAL MASTER  
21 IN THE SESSION TOMORROW.

22 MR. SCHAPIRO: WILL DO, YOUR HONOR.

23 THE COURT: OKAY.

24 MR. BRUSH, WILL THAT BE HELPFUL? DID I GET THAT RIGHT?

25 MR. BRUSH: YES, YOUR HONOR.

1 THE COURT: THANK YOU.

2 ALL RIGHT. MR. MAO, THAT'S HOW WE WILL PROCEED. I KNOW  
3 YOU WERE PATIENTLY RAISING YOUR HAND, BUT I THINK THAT THAT  
4 ADDRESSES THAT ISSUE.

5 AND AS TO THE -- AS I ALREADY SAID, AS TO THE ROLE OF THE  
6 INCOGNITO FIELDS, THAT'S GOING TO BE -- THAT IS THE SUBJECT OF  
7 DISCOVERY OVER THE COURSE OF THE NEXT WEEK, AND IT MAY  
8 EVENTUALLY INFORM THE DREML OR FLUME SEARCH. BUT MEANWHILE,  
9 THE WORK ON GETTING THOSE SEARCHES DONE AND SETTING DATES FOR  
10 COMPLETION OF THOSE SEARCHES WILL BE RESOLVED BEFORE THE  
11 SPECIAL MASTER AND THEY WILL BE RESOLVED SHORTLY.

12 MR. MAO: IF I MAY JUST MAKE A QUICK POINT ON THAT,  
13 YOUR HONOR, JUST REAL QUICK.

14 THE POINT OF ASKING FOR THOSE SCHEMAS AND FIELDS IS TO  
15 HELP EXPEDITE THE SEARCH, BECAUSE OTHERWISE WE WOULD HAVE TO  
16 SPECIFY --

17 THE COURT: I UNDERSTAND, MR. MAO. I UNDERSTAND.

18 MR. MAO: ALL RIGHT. I APPRECIATE IT.

19 THE COURT: THAT'S WHY I'M LEAVING THE MECHANICS IN  
20 THE VERY CAPABLE HANDS OF SPECIAL MASTER BRUSH AND MR. SCHMIDT.

21 MR. MAO: THANK YOU, YOUR HONOR.

22 THANK YOU, MR. BRUSH.

23 THE COURT: ALL RIGHT. LET'S MOVE TO P27, THE THIRD  
24 AND FINAL IDENTIFIED ISSUE.

25 AND I'M ONLY -- I AM TRYING TO MOVE US THROUGH

1 EFFICIENTLY, AND TO THE EXTENT MS. GAO WAS PREPARED TO SPEAK ON  
2 THE PRECEDING ISSUE, DON'T WORRY, THERE WILL BE LOTS OF  
3 OPPORTUNITIES TO SPEAK IN THIS CASE, I'M SURE.

4 OKAY. P27 RELATES TO DASHBOARD DATA AND THE PRODUCTION OF  
5 DASHBOARD DATA. I READ THROUGH THIS.

6 I'VE GOT SOME QUESTIONS OF -- WHO HAS THE MIC FOR  
7 PLAINTIFFS ON THIS?

8 MS. BONN: YOUR HONOR, ALEX FRAWLEY WILL BE TAKING  
9 THAT FOR PLAINTIFFS AND MARK MAO WILL BE ASSISTING AS WELL.

10 THE COURT: EXCELLENT.

11 SO MR. FRAWLEY, TO START WITH, WITH REGARDS TO PRODUCTION  
12 OF DASHBOARD DATA, IS IT PURSUANT TO A SPECIFIC RFP, THERE  
13 WASN'T ONE REFERENCED, OR WAS THIS PART OF SOME OTHER  
14 NEGOTIATION OR MEANS BETWEEN THE PARTIES?

15 MR. FRAWLEY: I BELIEVE THERE ARE RFP'S ON POINT,  
16 YOUR HONOR.

17 BUT I CAN SAY FOR THE [REDACTED]  
18 DASHBOARD, WE SENT AN E-MAIL A COUPLE OF WEEKS AGO SAYING THAT  
19 WE HAD NOTICED SOME DOCUMENTS REFERENCING THIS DASHBOARD AND WE  
20 THOUGHT IT WAS RESPONSIVE TO SOME RFP'S, AND I'M NOT LOOKING AT  
21 THE PARTICULAR NUMBER, BUT COUNSEL FOR GOOGLE SAID THEY WOULD  
22 PRODUCE A SCREENSHOT FOR US OF THE DASHBOARD, AND OUR  
23 UNDERSTANDING IS THEN WE WOULD DISCUSS WHAT DATA WOULD BE  
24 PRODUCED FROM THE DASHBOARD. AND WE GOT A PRODUCTION, AS  
25 GOOGLE EXPLAINED IN THEIR CHART, AND WE JUST THINK IT'S

1 INCOMPLETE.

2 THE COURT: OKAY. SO LET ME STOP YOU THERE, BECAUSE  
3 I'VE GOT MORE QUESTIONS, SO WE WILL JUST TAKE THEM ONE AT A  
4 TIME.

5 YOU ANTICIPATED MY NEXT QUESTION WHICH IS, MY  
6 UNDERSTANDING OF A DASHBOARD, YOU KNOW, IT'S DYNAMIC. I KNOW  
7 WHEN I'VE USED THEM, RIGHT, YOU PULL IT UP AND YOU SEE WHAT'S  
8 THE DATA TODAY, AND IT'S ALWAYS CHANGING.

9 SO WHEN YOU ASK FOR PRODUCTION OF A DASHBOARD, TYPICALLY  
10 YOU GET A SCREEN SHOT THAT IS ILLUSTRATING AVAILABLE DATA.


11 SO WHAT ARE YOU ASKING FOR WHEN YOU SAY YOU WANT A  
12 DASHBOARD PRODUCED, WHAT IS THAT REQUEST?

13 MR. FRAWLEY: I THINK IT'S EXACTLY WHAT YOU JUST  
14 SAID, YOUR HONOR.

15 WE WOULD LIKE TO SEE A SCREEN SHOT THAT WILL SHOW US WHAT  
16 EXACTLY CAN BE QUERIED. I GUESS HOW CAN THE DATA BE QUERIED,  
17 CAN IT BE QUERIED BY A CERTAIN TIMELINE? IS IT QUERIED BY  
18 PARTICULAR LOGS, BY PARTICULAR BROWSER TYPES? WE WANT TO SEE  
19 ALL THE DIFFERENT OPTIONS THAT A GOOGLE EMPLOYEE USING THIS  
20 DASHBOARD COULD PUNCH IN AND THEN SPIT SOMETHING OUT.

21 AND THAT'S KIND OF WHAT WE THINK WE ARE MISSING. SO WE  
22 THINK THE PRODUCTION IS INCOMPLETE BECAUSE WE HAVE A COUPLE OF  
23 GRAPHS THAT SUGGEST THAT THEY WERE PARTICULAR TO CERTAIN TIME  
24 PERIODS OR MAYBE ONE LOG, AND WE ARE CURIOUS WHAT OTHER LOGS  
25 ARE RELEVANT TO THIS DASHBOARD, WHAT OTHER TIME PERIODS.

1 THE COURT: WELL, BUT IF YOU ARE ASKING FOR SCREEN  
2 SHOTS, AND I TAKE GOOGLE'S RESPONSE, YOU KNOW, THEY ARE  
3 REFERRING TO SPECIFIC PAGES OF PRODUCTION AND NOT A LOT OF  
4 PAGES, BUT THOSE CERTAINLY -- I AM GOING TO GO OUT ON A LIMB  
5 HERE AND PRESUME THAT THOSE ARE SCREEN SHOT PAGES. SO WHAT --  
6 I MEAN, WHAT -- HAVE YOU HAD -- HAVE YOU SAT DOWN WITH GOOGLE  
7 AND SAID, OKAY, WE'VE GOT THIS SCREEN SHOT, IT SHOWS THAT DATA,  
8 WHAT ELSE?

9 MS. BONN: I CAN SHED LIGHT ON THAT BECAUSE I LOOKED  
10 THROUGH THE WHOLE PRODUCTION, YOUR HONOR. IT'S TIED TO THIS  
11  BIT.

12 AND WHAT OUR CONCERN IS IT LOOKED TO ME LIKE WHAT THEY  
13 PRODUCED IS THEY ACTUALLY RAN SOME QUERIES IN THE DASHBOARD,  
14 AND IT LOOKED TO ME LIKE THE QUERIES THAT THEY ACTUALLY RAN  
15 WERE TIED TO INCOGNITO BETWEEN NOVEMBER OF LAST YEAR AND THE  
16 PRESENT. AND THEN THEY PRODUCED CERTAIN SCREEN SHOTS SHOWING  
17 THE RESULTS OF THOSE QUERIES.

18 BUT WHAT'S UNCLEAR TO US, WHAT WE HAD ASKED FOR IS, FIRST  
19 OF ALL, WHAT CAN BE QUERIED? BECAUSE WHAT THEY DID IS THEY  
20 SORT OF JUMPED AHEAD AND THEY RAN A QUERY ON THEIR OWN. BUT  
21 FOR INSTANCE, IT LOOKS TO US LIKE THEY PULLED GLOBAL INCOGNITO  
22 DATA, AND WE ARE INTERESTED IN SEEING, WELL, WHAT'S THE U.S.  
23 INCOGNITO DATA, WHAT'S THE CALIFORNIA DATA?

24 AND WE DON'T KNOW YET BECAUSE THEY HAVEN'T PRODUCED THE  
25 SCREEN SHOT TO US SHOWING WHAT ARE THE OPTIONS THAT CAN BE

1       QUERIED. WHAT KIND OF A CUSTOM TARGETED QUERY THEY CAN RUN ON  
2       THE DASHBOARD.

3       SO OUR REAL ISSUE IS WE FEEL LIKE THEY JUMPED AHEAD AND  
4       RAN A QUERY, BUT WHAT WE WANTED TO DO IS UNDERSTAND WHAT  
5       QUERIES ARE POSSIBLE AND MEET AND CONFER WITH THEM SO THAT WE  
6       COULD JOINTLY DECIDE ON THE QUERY THAT NEEDED TO BE RUN.

7       SO THAT'S REALLY THE ISSUE THAT WE HAVE WITH THIS  
8       DASHBOARD.

9       THE COURT: OKAY. YOU'VE IDENTIFIED MULTIPLE  
10       DASHBOARDS.

11       WHEN YOU SAY "WHAT CAN BE QUERIED," WHAT ARE YOU ASKING  
12       FOR? IT SOUNDS LIKE AN INTERROGATORY WITHIN AN INTERROGATORY  
13       RESPONSE. ARE YOU ASKING FOR A LIST? WHAT ARE YOU ASKING FOR?

14       MS. BONN: YEAH. AND I WILL GIVE AN EXAMPLE,  
15       YOUR HONOR.

16       THERE ARE OTHER DASHBOARDS WHERE GOOGLE HAS PRODUCED A  
17       DROP-DOWN MENU WHERE WE CAN ACTUALLY SEE, THEY HAVE GIVEN US A  
18       SCREEN SHOT SHOWING THE DASHBOARD INTERFACE AND THEY HAVE SHOWN  
19       US A DROP-DOWN MENU WHERE YOU COULD SEARCH, I BELIEVE IT WAS  
20       LIKE THE [REDACTED] DATABASE, HERE ARE THE FOLLOWING QUERIES  
21       YOU CAN DO.

22       AND SO WE WERE ABLE TO USE THAT IN DEPOSITIONS AND FIGURE  
23       OUT, OKAY, SO HOW CAN YOU EASE THESE TO ACTUALLY QUERY THE  
24       DATA.

25       AND SO THE ISSUE WE HAVE IS IT LOOKS LIKE SOMEONE USED THE



1 DASHBOARD, RAN A PARTICULAR QUERY, AND HAVE GIVEN US THE DATA.  
2 BUT IT'S NOT SLICED IN THE WAY THAT WE ARE INTERESTED IN, AND  
3 WE WANT TO KNOW IF IT CAN BE SLICED IN THE WAY WE ARE  
4 INTERESTED IN.

5 THE COURT: ALL RIGHT.

6 MR. SCHAPIRO, FOR GOOGLE? THAT WOULD BE --

7 MR. SCHAPIRO: I THINK IT WILL BE MR. ANSORGE ON  
8 THIS, YOUR HONOR.

9 THE COURT: AH. MR. ANSORGE. ALL RIGHT. WE WILL  
10 START THERE.

11 MR. ANSORGE: YES, YOUR HONOR.

12 WE DO BELIEVE THAT THERE'S AN RFP THAT RELATES TO THIS AND  
13 IT'S -- RFP 166 WOULD BE ONE OF THEM. THE PARTIES MET AND  
14 CONFERRED EXTENSIVELY, I'M SURE MY BRETHREN WILL AGREE WITH ME,  
15 ON RFP 166. AND WE HAD BRIEFED IT IN VARIOUS FORMS TO YOU IN  
16 DISCOVERY CHARTS, AND THERE WAS AN UNDERSTANDING AS WE  
17 COMMUNICATED WITH EACH OTHER, WE ARE GOING TO BE PROVIDING THE  
18 SNAPSHOTS OF A PARTICULAR DASHBOARD AND THAT WOULD RESOLVE OUR  
19 OBLIGATIONS UNDER RFP 166.

20 SUBSEQUENTLY, AS PLAINTIFF PLAINTIFFS LEARNED OTHER FACTS  
21 IN DEPOSITIONS, JUST AS THE ORDINARY COURSE OF DISCOVERY IN A  
22 MATTER SUCH AS THIS, THEY HAVE COME BACK WITH FURTHER REQUESTS  
23 AS THEY RELATE TO THEM, THAT ARE SORT OF CONTINUOUS, AND EVER  
24 EVOLVING. SO OUR CONCERN ABOUT THE DASHBOARD ISSUE IS IT'S ONE  
25 THAT WE HAVE ALREADY ADDRESSED AND PROVIDED INFORMATION FOR.

1 THE OTHER TWO PARTS, ONE, TWO AND THREE THAT THEY HAVE  
2 LAID OUT HERE, YOUR HONOR, WE PRODUCED DASHBOARD DATA IN THE  
3 LEUNG PRODUCTION. AND DASHBOARD DATA HAS BEEN PRODUCED. WE  
4 NEED TO RUN SOME KIND OF A QUERY FOR THERE TO BE ANY  
5 INFORMATION WITHIN A DASHBOARD.

6 THAT DOESN'T STRIKE US AS AN UNUSUAL THING TO HAVE DONE,  
7 BUT WE WANT TO BE VERY CLEAR THAT WE HAVE PRODUCED DASHBOARD  
8 DATA IN RESPONSE TO EACH OF THESE CATEGORIES.

9 THE COURT: HAVE YOU PRODUCED A DROP-DOWN MENU AS TO  
10 MR. LEUNG AND MS. LIU, THE DASHBOARD THAT'S IDENTIFIED IN  
11 SECTION 2, AS NUMBER 2 IN THIS DISPUTE?

12 MR. ANSORGE: I WILL CONFIRM THAT, YOUR HONOR.

13 IF WE HAVEN'T PRODUCED A DROP-DOWN MENU, WE WOULD BE HAPPY  
14 TO ADD THAT IN THE PRODUCTION, THAT'S SOMETHING THAT WOULD NOT  
15 TAKE US A LOT OF WORK TO DO, BUT I'M HAPPY TO LOOK AT THAT  
16 AND --

17 THE COURT: DID YOU SAY THAT WOULD TAKE YOU A LOT OF  
18 WORK OR WOULD NOT?

19 MR. ANSORGE: WOULD NOT TAKE A LOT OF WORK.

20 THE COURT: THAT'S WHAT I EXPECTED YOU TO SAY, I  
21 WANTED TO BE CLEAR.

22 SIMILARLY, WITH REGARDS TO NUMBER 1, WHICH IS THE [REDACTED],  
23 OR [REDACTED] DASHBOARD, HAVE YOU PRODUCED A DROP-DOWN MENU?

24 MR. ANSORGE: I WILL HAVE TO GO AND CONFIRM. I  
25 BELIEVE THAT WE HAD, THAT WAS MY UNDERSTANDING. IF WE HAVE

1 NOT, WE WILL DO SO.

2 THE COURT: OKAY.

3 AND AS TO NUMBER 3, WHICH IS A DASHBOARD THAT DOESN'T HAVE

4 A NAME, BUT IS DESCRIBED AS ONE THAT IS DESIGNED TO [REDACTED]

5 [REDACTED],

6 ET CETERA, DO YOU RECOGNIZE THAT DASHBOARD? YOU DID SAY YOU

7 PRODUCED SOMETHING PURSUANT -- IN RESPONSE.

8 MR. ANSORGE: YES. YOUR HONOR.

9 MY UNDERSTANDING IS THAT WE PRODUCED SOMETHING IN RESPONSE

10 TO THAT DASHBOARD IN THE LATEST LEUNG PRODUCTION. WE WILL GO

11 AND WE WILL CONFIRM WHETHER THERE'S A DROP-DOWN MENU. IF THERE

12 IS ONE MISSING, WE ARE VERY HAPPY TO PROVIDE THAT TO PLAINTIFFS

13 AS WELL.

14 THE COURT: ALL RIGHT. THEN DROP-DOWN MENUS FOR ALL

15 THREE OF THE DASHBOARDS IDENTIFIED IN DISPUTE 27 WILL BE

16 PRODUCED TO PLAINTIFFS NO LATER THAN MARCH 2ND.

17 MR. REBLITZ-RICHARDSON: YOUR HONOR, MAY I VERY

18 BRIEFLY ADDRESS THE FIRST DASHBOARD, THE [REDACTED] DASHBOARD?

19 MR. ANSORGE IS CORRECT, IT IS RFP 166. WE HAD THAT IN THE

20 AUGUST CHART, AND WE REMOVED IT BASED ON GOOGLE'S


21 REPRESENTATION THAT THEY WOULD PROVIDE THAT DATA TO US.

22 THEY STILL HAVE NOT. WE HAVE THE FIELDS, WE HAVE THE

23 INFORMATION, WE HAVE TESTIMONY FROM A WITNESS SAYING HE CAN

24 READILY USE THAT DASHBOARD TO IDENTIFY INCOGNITO USERS AND

25 INCOGNITO PAGE LOADS, LIMITED TO PEOPLE IN THE UNITED STATES OR

1 LIMITED TO CALIFORNIA, FOR THE CLASS PERIOD. THAT'S THE DATA  
2 WE'VE ASKED FOR THAT'S READILY AVAILABLE FROM THIS   
3 DASHBOARD THAT GOOGLE STILL HAS NOT PROVIDED US.

4 SO WE HAVE RECEIVED INFORMATION ABOUT WHAT IS GENERALLY  
5 AVAILABLE THROUGH THIS DASHBOARD, BUT WE'VE ASKED FOR AND NOT  
6 RECEIVED THE CORE METRICS THAT ARE AT ISSUE IN THIS CASE. THE  
7 NUMBER OF INCOGNITO USERS, THE NUMBER OF INCOGNITO PAGE LOADS.  
8 WE'VE ASKED FOR IT THREE OR FOUR TIMES. WE THOUGHT WE HAD AN  
9 AGREEMENT IN AUGUST, THAT'S WHY WE TOOK IT OUT OF THE CHART  
10 THAT WAS SUBMITTED TO YOU, THAT WE HAD AN AGREEMENT ON RFP  
11 NUMBER 166, AND WE STILL HAVE NOT RECEIVED THOSE METRICS.

12 THE COURT: MR. ANSORGE, DO YOU HAVE THIS ONE AS  
13 WELL?

14 MR. ANSORGE: YES, YOUR HONOR.

15 AND I HOPE MY --

16 THE COURT: AND MR. ANSORGE, I'M GOING TO HAVE YOU  
17 SLOW DOWN A LITTLE BIT, PLEASE.

18 MR. ANSORGE: YES.

19 THE COURT: SO PROCEED, BUT --

20 MR. ANSORGE: WILL DO, ABSOLUTELY. I'M SORRY FOR  
21 SPEAKING TOO QUICKLY.

22 I HOPE MY MEMORY IS NOT FAILING ME, BUT MY UNDERSTANDING  
23 AND SINCERE BELIEF IS THAT WE DID PROVIDE INFORMATION TO  
24 PLAINTIFFS IN RESPONSE TO RFP 166 BECAUSE WE HAD EXTENSIVE MEET  
25 AND CONFERS WHERE PLAINTIFFS WOULD ASK US ABOUT ASPECTS OF THAT

1 INFORMATION. AND AT SOME STAGES, RFP 166 JUST HAS TO COME TO A  
2 CLOSE.

3 THE COURT: WELL, OKAY, SO LET ME STOP YOU THERE,  
4 MR. ANSORGE.

5 MR. REBLITZ-RICHARDSON IDENTIFIED SPECIFIC DEPOSITION  
6 TESTIMONY THAT LAID OUT SPECIAL SPECIFIC DATA WITH REGARDS TO  
7 IDENTIFICATION AND USE, YOU KNOW, IN THE UNITED STATES, AND HAS  
8 THAT INFORMATION BEEN PRODUCED, OR DO YOU KNOW, SITTING HERE  
9 TODAY?

10 MR. ANSORGE: AND THAT PARTICULAR DATA, I BELIEVE  
11 MR. REBLITZ-RICHARDSON IS CONFUSING AGGREGATE METRICS THAT ONE  
12 OF THE WITNESSES WHO WAS DEPOSED IN ZURICH A FEW WEEKS AGO WAS  
13 REFERRING TO THAT HE HAD CONSTRUCTED ON HIS OWN, WITH THE  
14 UNDERLYING DASHBOARD THAT HAS BEEN PRODUCED.

15 AND THAT INFORMATION HAS NOT BEEN PRODUCED, WE WOULD HAVE  
16 TO WORK WITH, PULL OUT THE SPECIFIC SEARCH THAT HE HAS  
17 CONSTRUCTED.

18 THE DIFFERENCE HERE, YOUR HONOR, IS THAT UP UNTIL NOW WE  
19 HAVE BEEN DISCUSSING OVERALL AGGREGATE DASHBOARDS THAT ARE  
20 SUPPOSED TO REPORT TO INDIVIDUAL UNDERLYING BITS OF DATA. WHAT  
21 MR. REBLITZ-RICHARDSON IS INTRODUCING NOW RELATES TO AGGREGATE  
22 STATISTICS FOR 28 DAYS, SO IT'S QUITE A DIFFERENT PROCESS, A  
23 DIFFERENT DASHBOARD, DARE I SAY, AND A SEPARATE SET OF DATA  
24 THAN WHAT WE HAVE BEEN DISCUSSING SO FAR.

25 THE COURT: BUT WAS THAT ASKED FOR FROM PLAINTIFFS

1 AND DID GOOGLE AGREE TO PRODUCE IT?

2 MR. ANSORGE: YOUR HONOR, IT WAS SUBSEQUENTLY ASKED  
3 FOR AFTER THE HALAVATI DEPOSITION, AND GOOGLE DID NOT AGREE TO  
4 PRODUCE IT AT THAT TIME BECAUSE WE FELT THAT WE HAD FULFILLED  
5 OUR OBLIGATIONS UNDER RFP 166, UNDER ALL THE OTHER DASHBOARDS  
6 REQUIREMENTS THAT WERE BEING LODGED. AND THIS PARTICULAR  
7 ENGINEER, WHO NO LONGER WORKS IN THIS AREA, WAS ASKED TO  
8 RECONSTRUCT AND PULL SEARCHES THAT HE HAD RUN MORE THAN A YEAR  
9 AGO, OR TWO YEARS AGO. WE FELT THAT WAS GOING BEYOND THE SCOPE  
10 OF THE DISCOVERY IN THIS CASE.

11 BUT IF YOUR HONOR WOULD LIKE US TO REVISIT IT AND WORK  
12 WITH THE ENGINEER, WE WOULD BE HAPPY TO DO THAT.

13 THE COURT: ALL RIGHT.

14 IS THAT THE SEARCH, MR. RICHARDSON?

15 MR. REBLITZ-RICHARDSON: THAT IS, YOUR HONOR.

16 THIS IS BASIC CORE INFORMATION FROM THE DASHBOARD  
17 REGARDING [REDACTED] --

18 THE COURT: I GOT IT. I GOT IT THE FIRST TIME.

19 MR. REBLITZ-RICHARDSON: THANK YOU.

20 THE COURT: OKAY. AND THAT WAS THE HAVARTI  
21 DEPOSITION, WAS THAT RIGHT?

22 MR. REBLITZ-RICHARDSON: HALAVATI. YES, YOUR HONOR.

23 THE COURT: HALAVATI. EXCUSE ME. THANK YOU.

24 ALL RIGHT. THEN THE [REDACTED] DASHBOARD MATERIAL OR DATA THAT  
25 WAS IDENTIFIED IN THAT DEPOSITION AND REQUESTED BY PLAINTIFFS

1 WILL BE PRODUCED.

2 LET'S GET THAT PRODUCED IN, LET'S SEE, WHERE ARE WE, WE  
3 ARE ON THE 28TH, SO GET THAT PRODUCED BY MARCH 7TH.

4 MR. REBLITZ-RICHARDSON: THANK YOU, YOUR HONOR.

5 MR. ANSORGE: YOUR HONOR, WE WILL HAVE TO GET IN  
6 TOUCH WITH THE ENGINEER AND MAKE SURE THE SEARCH IS STILL LIVE.

7 HIS TESTIMONY DURING THE DEPOSITION WAS THAT HE EXPECTED  
8 TO BE, BUT HE HAD NOT WORKED IN THAT AREA OR ON THE PRODUCT FOR  
9 MORE THAN A YEAR. SO I WANT TO JUST ADD THAT POTENTIAL CAVEAT.

10 THE COURT: OKAY. GET ON THE PHONE.

11 THANK YOU, MR. ANSORGE, I APPRECIATE IT.

12 SO FOR P27, THE DROP-DOWN MENUS, TO THE EXTENT NOT ALREADY  
13 PRODUCED FOR THE THREE IDENTIFIED DASHBOARDS WILL BE PRODUCED.

14 IN ADDITION, FOR THE [REDACTED] DASHBOARD, THE SEARCH REFERENCED  
15 IN THE EXPERT'S DEPOSITION, THAT DATA WILL BE PRODUCED BY MARCH  
16 7TH.

17 ALL RIGHT. I BELIEVE THAT CONCLUDES THE BROWN IDENTIFIED  
18 DISPUTES.

19 AND I WILL CIRCLE BACK -- WELL, NO, LET ME JUST TAKE CARE  
20 OF IT RIGHT NOW.

21 MR. SCHAPIRO: AND YOUR HONOR, BECAUSE WE WERE JUST  
22 CHECKING WITH THE CLIENT, I HAVE ONE MINOR CAVEAT RELATING TO  
23 THE FIRST ISSUE.

24 SO WHERE YOU'VE ASKED US TO PRODUCE THE DOCUMENTS FROM  
25 MS. LIU --

1 THE COURT: YES.

2 MR. SCHAPIRO: BY THE 2ND, WE CAN DO THAT, BUT THAT  
3 WOULD NOT ALLOW TIME FOR WHAT IS CALLED DE-DUPES, BECAUSE THEY  
4 HAVE TO GET UPLOADED INTO RELATIVITY, WHICH IS COLLECTED,  
5 UPLOADED INTO RELATIVITY, THE DATABASE --

6 THE COURT: AND THEN RUN, UH-HUH.

7 MR. SCHAPIRO: SO THE TWO CHOICES, AND I GUESS WE  
8 WOULD ASK THE PLAINTIFFS WHICH THEY WOULD PREFER, WE COULD  
9 MANUALLY REVIEW PDF'S, BUT I DON'T THINK WE WOULD BE ABLE TO  
10 DE-DUPE THEM IN THAT CASE. WE HAVE TO REVIEW THEM, PRODUCE  
11 THEM, THEY MIGHT GET DUPLICATES THERE WHICH MIGHT MAKE MORE  
12 WORK FOR THEM, BUT THEY WOULD GET IT ON, PRESUMABLY -- I THINK  
13 WE COULD DO IT BY WEDNESDAY, WHICH IS THE DATE YOU ORDERED, BUT  
14 IF WE ADD A COUPLE OF DAYS TO THAT, WE COULD HAVE IT INTO  
15 RELATIVITY AND THEY WOULD NOT RECEIVE DUPLICATES.

16 THE COURT: OKAY. WHY DON'T YOU GET A HIT COUNT FOR  
17 THE PLAINTIFFS AND MEET AND CONFER ON THAT. IT SEEMS LIKE YOU  
18 OUGHT TO BE ABLE TO WORK THAT OUT. THEY CAN MAKE A CHOICE  
19 WHETHER THEY WANT THE WHOLE PRODUCTION OR WANT YOU TO TAKE THE  
20 TIME TO DE-DUPE IT. IT DOES TAKE TIME, OFTEN THAT'S TIME WELL  
21 SPENT, BUT I WILL LET THE PARTIES DISCUSS THAT.

22 MR. SCHAPIRO: THANK YOU, JUDGE.

23 THE COURT: THANK YOU.

24 MS. BONN, AS I SAID, I DON'T KNOW YET WHICH THE ADDITIONAL  
25 DISPUTES I WILL BE ABLE TO GET TO WHEN. DID PLAINTIFFS HAVE



1 ANOTHER TWO DISPUTES THAT THEY WANT TO BE SURE GO TO THE FRONT  
2 OF THE LINE BEYOND THE THREE THAT WERE IDENTIFIED FOR TODAY'S  
3 PROCEEDINGS?

4 MS. BONN: I WILL DEFER TO MR. RICHARDSON AS TO WHICH  
5 TWO WE WILL TALK ABOUT TODAY.

6 THE COURT: WE WON'T GET THEM TO TODAY, IT'S JUST  
7 WHERE I WILL TURN MY ATTENTION NEXT, AS TIME ALLOWS, IT WILL BE  
8 LATER THIS WEEK.

9 MS. BONN: I'M TAKING A LOOK. I THINK FOR US, I'M  
10 GOING TO SAY PRIORITY RFP'S AND PRIVILEGE LOG. BUT IF WE COULD  
11 JUST SEND AN E-MAIL TO MS. FANTHORPE AFTER THE HEARING, WE CAN  
12 CONFIRM WHICH DISPUTES WE WANTED TO GET.

13 IT LOOKS LIKE MR. RICHARDSON AGREES.

14 THE COURT: THAT WOULD BE FINE, BUT FIRST I WANT YOU  
15 TO LET GOOGLE KNOW WHAT THOSE DISPUTES ARE. AND YOU CAN ALL  
16 HAVE A CONVERSATION BEFORE YOU LET ME KNOW.

17 MS. BONN: WILL DO, YOUR HONOR.

18 I APOLOGIZE, I HAD ONE FINAL QUESTION IF IT'S ALL RIGHT.

19 I THINK BOTH SIDES RECEIVED THE COURT'S ORDERS ON THE  
20 30(B)(6), AND I THINK WE HAVE ALL NEEDED A LITTLE BIT OF TIME  
21 DIGEST IT, BUT I THINK WE HAVEN'T RECEIVED DATES AND DESIGNEES  
22 YET. I THINK IT SEEMS UNLIKELY THAT THOSE DEPOSITIONS ARE  
23 GOING TO HAPPEN THIS WEEK BECAUSE OF THAT, BUT I THINK WE DON'T  
24 WANT IT TO GO MUCH LATER THAN NEXT WEEK. SO I JUST WANTED TO  
25 GET SOME GUIDANCE ON TIMING FOR ACTUALLY GETTING THESE

1 30 (B) (6) --

2 THE COURT: THE GUIDANCE IS FOR YOU TO TALK TO  
3 COUNSEL, TALK TO GOOGLE AND WORK IT OUT. YOU GUYS HAVE A  
4 DISCOVERY CUTOFF OF FRIDAY. NOW OFTEN, SCHEDULING DEPOSITIONS  
5 HAVE TO ALL FALL A FEW DAYS THEREAFTER, BUT I THINK  
6 JUDGE GONZALEZ ROGERS MADE IT VERY CLEAR THE SCHEDULE IS  
7 STICKING.

8 SO, YOU KNOW, I'VE GOTTEN DOWN TO THE POINT OF GIVING YOU  
9 GUYS TIMELINES FOR BACK AND FORTH BEFORE, BUT EVERYBODY ON THIS  
10 CALL, YOU DON'T NEED ME TO MANAGE THAT LEVEL OF DISCOVERY  
11 DISCUSSIONS. IF YOU DO, I WILL DO IT, BUT WE ARE GOING TO DO  
12 IT LIVE IN MY CONFERENCE ROOM. WE ARE GOING TO DO IT LIVE IN  
13 MY COURT. YOU ALL ARE GOING TO BE DOWN THE HALL IN A  
14 CONFERENCE ROOM.

15 MS. BONN: THANK YOU, YOUR HONOR.

16 THE COURT: OKAY. ALL RIGHT.

17 LET'S TURN TO CALHOUN, PLEASE.

18 THE CLERK: CALLING CASE 20-CV-5146. CALHOUN, ET AL.  
19 VERSUS GOOGLE, LLC.

20 COUNSEL, PLEASE IDENTIFY YOURSELVES FOR THE RECORD,  
21 BEGINNING WITH PLAINTIFF.

22 MR. STRAITE: GOOD AFTERNOON, YOUR HONOR.

23 THIS IS DAVID STRAIT, WITH THE LAW FIRM OF DICELLO LEVITT  
24 GUTZLER FOR PLAINTIFFS.

25 JOINING ME TODAY IS MY ASSOCIATE SHARON CRUZ. I DON'T

1 BELIEVE SHE'S EVER ARGUED BEFORE YOUR HONOR, SHE'S AN  
2 ASSOCIATE, JUST JOINED US FROM ILLINOIS A.G.'S OFFICE. AND  
3 WITH YOUR PERMISSION, SHE MAY BE ARGUING ONE ISSUE TODAY,  
4 CONSISTENT WITH OUR DIRECTIVE TO GIVE OPPORTUNITIES TO YOUNG  
5 LAWYERS.

6 ALSO JOINING ME TODAY IS LESLEY WEAVER FROM BLEICHMAR  
7 FONTIIN OAKLAND. ALSO HER ASSOCIATE, JOSH SAMRA.

8 ALSO JOINING ME IS JAY BARNES FROM SIMMONS HANLY CONROY.  
9 JOINING HIM ALSO IS AN TRUONG FROM HIS NEW YORK OFFICE.

10 DID I MISS ANYBODY, JAY OR LESLEY?

11 MS. WEAVER: NO. WELL DONE, MR. STRAITE.

12 THE COURT: IT LOOKS LIKE WE'VE GOT EVERYBODY.  
13 WELCOME ALL.

14 MR. SHAPIRO, GOOGLE'S APPEARANCES.

15 MR. SCHAPIRO: SAME CAST OF CHARACTERS, IF THAT WORKS  
16 FOR THE COURT REPORTER. WE ARE HAPPY TO DO IT AGAIN IF  
17 THERE'S -- IF IT'S BETTER FOR THE TRANSCRIPT.

18 THE COURT: WE WILL NOTE FOR THE RECORD IT IS THE  
19 SAME COUNSEL FOR GOOGLE AS MADE THEIR REPRESENTATIONS IN BROWN.

20 IN THE INTEREST OF TIME AND THE ZOOM FORMAT, WE WILL MOVE  
21 FORWARD.

22 OKAY. IN CALHOUN, I HAVE FOUR DISPUTES THAT WERE  
23 IDENTIFIED BY THE PARTIES. AGAIN, I HAVE BEEN -- WHERE  
24 HELPFUL, I HAVE CONFERRED WITH THE SPECIAL MASTER, BECAUSE  
25 THERE IS SOME OVERLAP HERE.

1 SO LET'S START. LET'S TURN TO DISPUTE 1.15, WHICH  
2 ADDRESSED TRANSMISSIONS TO GOOGLE.COM AND GOOGLE API'S.

3 NOW LET ME BE VERY CLEAR, IN ADDRESSING THESE ISSUES, THAT  
4 WE ARE NOT REARGUING OR RECONSIDERING PREVIOUS DISCOVERY ORDERS  
5 OF THIS CASE. OBVIOUSLY WE HAVE ALL BEEN HARD AT WORK ON  
6 DISCOVERY IN THIS CASE FOR NOW, A YEAR, AND MY ORDERS STAND ON  
7 THEIR OWN AS ISSUED, AND THEY CERTAINLY REFLECT THIS COURT'S  
8 RULINGS AT THAT RESPECTIVE POINT IN TIME.

9 FURTHER, MY ORDERS ARE THE STARTING PLACE -- WERE THE  
10 STARTING PLACE FOR THE SPECIAL MASTER WHO, ALONG WITH  
11 MR. SCHMIDT, HAS WORKED HUNDREDS OF HOURS ON THIS CASE AND  
12 HUNDREDS OF HOURS WITH THE PARTIES, MOST OF THAT TIME BEING  
13 WITH THE PARTIES, TO DEVELOP AND EXECUTE A PROCESS OF  
14 IDENTIFYING, COLLECTING AND PRODUCING, POTENTIALLY RELEVANT  
15 DATA, ALL OF COURSE WITH AN EYE TO PROPORTIONALITY, AS  
16 APPROPRIATE IN THIS ACTION.

17 AS I SAID, I CONFER WITH THE SPECIAL MASTER FREQUENTLY,  
18 I'M KEPT UP-TO-DATE ON THE DISPUTES IN FRONT OF HIM AND THE  
19 PROGRESS THAT IS AND AT TIMES IS NOT BEING MADE, AND I HAVE A  
20 HIGH DEGREE OF CONFIDENCE IN THE PROCESS AS WE WORKED THROUGH  
21 IT THIS YEAR, AND OF COURSE SPECIFICALLY THE PROCESS REFLECTED  
22 IN THE NOVEMBER 12TH ORDER IS ONE THAT I HAVE A HIGH DEGREE OF  
23 CONFIDENCE IN.

24 NOW THERE'S AN UNDERCURRENT HERE OF ISSUES RELATING TO  
25 RELEVANCY, AND RELEVANCY FOR DISCOVERY, OF COURSE, IS QUITE

1 BROAD, AND IT'S HARD TO DRAW LINES HERE AS TO -- WELL, IN ANY  
2 GIVEN DATA SOURCE, WHAT IS THEIR RELEVANT DATA OR WHAT IS THE  
3 RELEVANT DATA, BECAUSE IT'S UNKNOWN EXACTLY WHAT IS IN THE  
4 SOURCE. AND THAT'S ALL PART OF THE PROCESS OF UNPACKING THAT,  
5 IS WHAT IS BEFORE THE SPECIAL MASTER.

6 SO ANY RULING I MAKE HERE IN RESPONSE TO THIS DISPUTE  
7 TODAY IS WITHOUT PREJUDICE TO GOOGLE ARGUING RELEVANCY OF DATA  
8 THAT IS PRODUCED AS IT APPEARS OR FOR THE PURPOSES OF EXPERT  
9 REPORTS OR FOR USE AT TRIAL.

10 AGAIN, BECAUSE IT'S PRODUCED IN DISCOVERY, DOESN'T MEAN --  
11 YOU ARE NOT TAKING AWAY ANYTHING, IN TERMS OF ARGUMENTS, AS TO  
12 THE USE OF THAT INFORMATION LATER IN THE CASE.

13 SO THAT'S -- YOU KNOW, WE'RE AT A POINT WHERE WE HAVE TO  
14 GET MATERIAL PRODUCED OUT OF THESE DATA SOURCES. I'M ALSO  
15 MINDFUL, HOWEVER, AS WE HAVE DISCUSSED SEVERAL TIMES, THAT THE  
16 PROCESS, AGAIN, PARTICULARLY THE PROCESS REFLECTED IN THE  
17 NOVEMBER 12TH ORDER, IS DESIGNED TO FUNNEL AND TO NARROW, GET  
18 MORE NARROW AS WE MOVE THROUGH DISCOVERY.

19 AND OBVIOUSLY THERE'S TENSION THERE. BUT HAVING READ  
20 THROUGH THE ISSUES PRESENTED IN THIS DISPUTE, PARTICULARLY IN  
21 1.15, AND HAVING DISCUSSED THE ISSUE WITH SPECIAL MASTER BRUSH,  
22 WHAT APPEARS TO ME TO BE THE PRUDENT WAY FORWARD AT THIS POINT  
23 IS FOR GOOGLE TO SEARCH THE GAIA KEY DATA ACROSS ZWIEBACK  
24 [REDACTED] AND ZWIEBACK [REDACTED] WITHOUT LIMITATION. SEARCH THAT,  
25 PRODUCE THAT DATA, AND THEN WE WILL -- THERE MAY BE OTHER

1 ISSUES WITH REGARDS TO RELEVANCY DOWN THE ROAD, BUT LOOKING AT  
2 MY ORDERS AND LOOKING AT THE PROCESS AS IT HAS EVOLVED IN FRONT  
3 OF THE SPECIAL MASTER, THAT IS WHERE WE ARE.

4 MR. STRAITE: THANK YOU, YOUR HONOR.

5 DAVID STRAIGHT FOR PLAINTIFFS. AND JUST TO CONFIRM,  
6 BECAUSE YOU MENTIONED ZWIEBACK [REDACTED] YOU SAID GAIA KEY, DID  
7 YOU ALSO MEAN BISCOTTI KEY AND ZWIEBACK KEY, THOSE WOULD BE THE  
8 DATA SOURCES THAT WOULD CONTAIN THE ZWIEBACK KEY DATA, SO JUST  
9 TO CLARIFY YOU DID SAY GAIA.

10 THE COURT: YOU SAID BISCOTTI KEY AND ZWIEBACK KEY?

11 MR. STRAITE: CORRECT.

12 SO THE DATA SOURCES YOU MENTIONED ARE THE DATA SOURCES  
13 LIKELY CONTAIN THE ZWIEBACK DATA. YOU HAD SAID GAIA KEY  
14 INFORMATION IN ZWIEBACK [REDACTED] SO WE JUST WANTED TO CLARIFY  
15 THAT YOU MEANT GAIA, BISCOTTI, OR ZWIEBACK KEY DATA IN THOSE  
16 DATA SOURCES YOU MENTIONED, WHICH WOULD MAKE MORE SENSE.

17 THE COURT: LET ME ASK THE SPECIAL MASTER FOR  
18 CLARIFICATION, BECAUSE I DEVELOPED THIS AND DID NOT RUN IT BY  
19 HIM.

20 MR. BRUSH: YES, YOUR HONOR.

21 WHAT MR. STRAITE IS RECOMMENDING WOULD BE APPROPRIATE.

22 THE COURT: OKAY. SO IT'S GAIA KEY, BISCOTTI KEY AND  
23 ZWIEBACK KEY DATA, IN THOSE TWO DATA SOURCES, BEING ZWIEBACK  
24 [REDACTED] AND ZWIEBACK [REDACTED]

25 MR. STRAITE: CORRECT.

1 THE COURT: IS THAT RIGHT?

2 MR. BRUSH: YES.

3 THE COURT: ALL RIGHT. HANG ON, ONE AT A TIME.

4 OKAY. WHO ELSE FROM -- WAS THERE ANOTHER COMMENT FROM  
5 PLAINTIFFS?

6 MR. STRAITE: I THINK WE HAD ALSO DISCUSSED WITH  
7 SPECIAL MASTER BRUSH THE [REDACTED] DATABASE, THAT STANDS FOR DOUBLE  
8 CLICK.

9 JAY, DO YOU WANT TO SPEAK TO THOSE? I KNOW THAT CAME UP  
10 IN TODAY'S CONFERENCE. THAT WOULD BE CONSISTENT WITH WHAT YOU  
11 ARE TALKING ABOUT.

12 MR. BARNES: RIGHT.

13 JUDGE VAN KEULEN, IT'S [REDACTED] AND THEN THERE'S DATA IN  
14 [REDACTED] THAT IS GAIA KEYED, ZWIEBACK KEYED AND DOUBLE KEYED.  
15 AND THAT'S THE -- YOU SAID ZWIEBACK [REDACTED] BUT THAT'S SORT  
16 OF -- [REDACTED] IS -- THERE'S [REDACTED] AND THEN THERE'S ZWIEBACK  
17 KEY, GAIA KEY AND ZWIEBACK KEY, ALL WITHIN [REDACTED]

18 THE COURT: OKAY. THAT'S NOT HOW I WAS READING THE  
19 SUBMISSIONS BETWEEN THE PARTIES.

20 MR. BRUSH?

21 MR. BRUSH: I THINK THE WAY MR. BARNES SUGGESTS --  
22 THE ORDER OF OPERATIONS OF WORDS WAS ACCURATE, AND THE BEST WAY  
23 TO INTERPRET THAT VERSES SOME OF THE OTHER PRIOR SUBMISSIONS,  
24 THE WAY THAT IT WAS JUST EXPLAINED, WAS MEANINGFUL AND HELPFUL,  
25 BECAUSE [REDACTED] BEING THE LARGER SET, AND WE ARE TALKING ABOUT

1 THE SPECIFIC SUBSETS OF THAT DATA.

2 THE COURT: WELL, IT'S THE PLAINTIFFS WHO USE THE  
3 PHRASE ZWIEBACK [REDACTED] AND ZWIEBACK [REDACTED] WHICH IS WHERE I WAS  
4 FOCUSED.

5 MR. BARNES: AND YOUR HONOR, I THINK THE REASON FOR  
6 THAT IS THE OBJECTION TO ZWIEBACK. THERE'S NOT BEEN THE SAME  
7 SORT OF OBJECTIONS TO DOUBLE AND GAIA.

8 SO THAT'S, I THINK THAT'S -- THAT'S WHY OUR FOCUS WAS ON  
9 ZWIEBACK, IS BECAUSE THERE'S BEEN THIS RECURRING DISPUTE THAT I  
10 THINK THE SPECIAL MASTER CAN ATTEST TO, ABOUT ZWIEBACK. HE'S  
11 HEARD THE WORD ZWIEBACK MORE TIMES THAN I THINK HE WOULD LIKE  
12 TO SAY, AND THAT'S WHY I THINK THAT OUR FOCUS WAS ON ZWIEBACK.

13 THE COURT: ALL RIGHT.

14 I WANT US TO BE CLEAR, BECAUSE I WILL GIVE GOOGLE A CHANCE  
15 TO RESPOND.

16 BUT MR. BRUSH, YOU ARE GOING TO HAVE TO CLARIFY THEN  
17 BECAUSE I -- IT'S A DIFFERENT VOCABULARY THAN I WAS USING.

18 MS. TREBICKA: WELL, MAYBE IF MR. --

19 THE COURT: HANG ON ONE SECOND, LET ME HEAR FROM  
20 SPECIAL MASTER BRUSH, AND THEN DON'T WORRY, MS. TREBICKA.

21 MR. BRUSH: ZWIEBACK [REDACTED] GAIA [REDACTED] AND DOUBLE  
22 CLICK [REDACTED] OR [REDACTED] ARE THE DATA SOURCES THAT WE WANT TO  
23 SEARCH -- WE WANT TO HAVE SEARCHED WITH PLAINTIFFS'S SEARCH  
24 TERMS.

25 THE COURT: SAY THOSE AGAIN, MR. BRUSH, I WANT TO BE



1 SURE THEY ARE CLEAR ON THE RECORD. YOU WERE A LITTLE MUFFLED.

2 MR. BRUSH: YEAH.

3 AND I'M TRYING TO THINK, SO ZWIEBACK [REDACTED] GAIA [REDACTED]  
4 AND DOUBLE CLICK ARE THE DATA SOURCES TO BE SEARCHED WITH THE  
5 PLAINTIFF SUPPLIED SEARCH CRITERIA.

6 THE COURT: ZWIEBACK [REDACTED] GAIA [REDACTED]

7 MR. BRUSH: AND [REDACTED] WHICH IS THE DOUBLE CLICK [REDACTED]

8 [REDACTED]

9 THE COURT: ALL RIGHT.

10 MR. BARNES: AND [REDACTED] SPECIAL MASTER BRUSH, WHICH  
11 THERE'S THIS RELATIONSHIP BETWEEN [REDACTED] AND [REDACTED] RIGHT.

12 I THINK -- JUDGE VAN KEULEN, I THINK YOU MENTIONED [REDACTED]  
13 EARLIER AS WELL. SPECIAL MASTER BRUSH, I DON'T KNOW IF YOU --

14 THE COURT: I DID, BUT I HAD IT IN A DIFFERENT  
15 CONTEXT. JUST A MINUTE, MR. BARNES, JUST A MINUTE.

16 MR. BRUSH?

17 MR. BRUSH: YES. ALTHOUGH WE THOUGHT THAT HAD BEEN  
18 SEARCHED. BUT IF THERE'S SOMETHING MISSING IN THAT, I WOULD  
19 LIKE TO HEAR THAT NOW.

20 MR. BARNES: WE THINK GAIA AND DOUBLE [REDACTED] HAVE BEEN  
21 SEARCHED, IS OUR UNDERSTANDING, BUT IT HASN'T BEEN SEARCHED FOR  
22 ZWIEBACK. THAT'S OUR UNDERSTANDING.

23 THERE WAS GAIA [REDACTED] THERE WAS DOUBLE [REDACTED] BUT THERE WAS NOT  
24 ZWIEBACK [REDACTED] BECAUSE WE HAD THIS BIG FIGHT OVER ZWIEBACK.

25 THE COURT: SO MR. BARNES, YOU ARE IDENTIFYING FOUR

1 DATA SOURCES THEN?

2 MR. BARNES: WELL, YOUR HONOR, WE WOULD SAY THAT  
3 THERE ARE TWO. THERE'S [REDACTED] AND THERE'S [REDACTED] AND THERE ARE  
4 DIFFERENT KEY SPACES WITHIN THOSE DATA SOURCES, AND THE KEY  
5 SPACES ARE ZWIEBACK, GAIA, DOUBLE. ON BOTH OF THEM, RIGHT.

6 AND SO [REDACTED] WE HAVE ASKED FOR PRODUCTION OF GAIA,  
7 DOUBLE AND ZWIEBACK. [REDACTED] WE PREVIOUSLY RECEIVED PRODUCTION OF  
8 GAIA, AND DOUBLE, BUT NOT ZWIEBACK.

9 THE COURT: OKAY.

10 ALL RIGHT. MS. TREBICKA?

11 MS. TREBICKA: YES, YOUR HONOR.

12 I WILL TRY TO DO MY BEST, BECAUSE IT SEEMS A LITTLE BIT OF  
13 A MOVING TARGET IN THE SENSE THAT IT'S NOT EXTREMELY CLEAR  
14 WHERE WE ARE HEADED.

15 WHAT WE HAD INITIALLY THOUGHT FROM THE E-MAIL THAT THE  
16 SPECIAL MASTER SENT US THIS WEEKEND WAS THAT THE DISCUSSION, AT  
17 LEAST, WAS RELATED TO THREE KEY VALUE SPACES, ZWIEBACK, GAIA,  
18 AND DOUBLE CLICK, WITH RESPECT TO [REDACTED]

19 SO I WILL ADDRESS THAT FIRST, AND THEN WE CAN GO TO THE  
20 SECOND PART OF THIS WHICH IS REALLY SOMETHING NEW THAT WE WILL  
21 HAVE TO DIGEST AND PROBABLY ADDRESS SEPARATELY.

22 BUT FOR DOUBLE CLICK [REDACTED] AND DOUBLE CLICK IS THE  
23 COOKIE THAT RELATES TO THE DISPLAY ADS INFRASTRUCTURE THAT IS  
24 THE CORE OF THE CASE, REALLY, WE CAN AGREE TO SEARCH DOUBLE  
25 CLICK [REDACTED] AND IT'S GOING TO BE A BIG UNDERTAKING, BUT WE

1 WILL DO IT.

2 THE CONCERN THAT WE HAVE IS WITH ZWIEBACK [REDACTED] AND GAIA  
3 [REDACTED] ZWIEBACK [REDACTED] HAS [REDACTED] COLUMNS, AND GAIA [REDACTED] HAS  
4 [REDACTED] SEPARATE COLUMNS.

5 AND LET ME JUST BRIEFLY EXPLAIN IN LAYMAN'S TERMS WHAT A  
6 COLUMN IS. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] SO IT'S NOT JUST THE COLUMN, WHEN YOU THINK OF IT AS  
10 AN EXCEL SPREADSHEET, IT'S ACTUALLY MUCH, MUCH MORE COMPLICATED  
11 THAN THAT.

12 THE COURT: RIGHT.

13 MS. TREBICKA: AND THESE TWO DATABASES, ARE NOT  
14 LIMITED TO ADS, THEY INCLUDE THINGS LIKE GOOGLE ASSISTANT OR  
15 GOOGLE PLAY, GOOGLE PAYMENT --

16 THE COURT: UNDERSTOOD, YEAH.

17 MS. TREBICKA: -- ET CETERA.

18 SO MY POINT IS THAT EACH OF THESE PRODUCTS ARE DIFFERENT  
19 ENOUGH THAT THEY HAVE DIFFERENT TEAMS MANAGING THEM AND ALSO  
20 CONTROLLING THE ACCESS TO THESE. THEY CONTAIN EXTREMELY  
21 SENSITIVE DATA. AND THE REASON THAT THERE IS THIS, ESSENTIALLY  
22 LOCK ON THESE SEPARATE COLUMNS, WHICH ARE REALLY ALMOST LIKE  
23 SEPARATE DATABASES, RIGHT, WITH A LOT OF INFORMATION, IS  
24 BECAUSE GOOGLE IS UNDER VARIOUS OBLIGATIONS TO KEEP THESE UNDER  
25 LOCK AND KEY FROM REGULATIONS, CONSENT DECREES, LAWS, DIFFERENT

1 STATES, FEDERAL LAWS, ET CETERA. AND THERE IS NO ONE MASTER  
2 KEY THAT WILL ALLOW GOOGLE TO ACTUALLY SEARCH THIS IN ANY  
3 EFFICIENT WAY, FOR MANY REASON, INCLUDING BECAUSE OF THESE  
4 DIFFERENT ACCESS POINTS OR THESE DIFFERENT ACCESS PERMISSIONS  
5 THAT NEED TO BE OBTAINED. AND THIS IS FOR GOOD REASON.

6 AND I WOULD LIKE TO PUT, JUST BECAUSE IT'S A VERY  
7 COMPLICATED ISSUE, I WOULD JUST LIKE TO PUT IT IN SIMPLE TERMS,  
8 IT'S ALMOST LIKE ASKING SOMEONE TO SEARCH FOR THE WORD  
9 "SUBMARINE" THROUGH ALL COURT RECORDS EVER, STATE, FEDERAL,  
10 WHEREVER IT IS, AND SOMEONE WHO HAS THE TASK OF DOING THIS WILL  
11 HAVE TO GO TO THE JUVENILE RECORDS DEPARTMENT OR THE CRIMINAL  
12 RECORDS OR CHILD WELFARE, WHATEVER, AND GET THE PERMISSION TO  
13 SEARCH THAT KIND OF A DATABASE FOR THE WORD "SUBMARINE" IN THE  
14 OFF CHANCE THAT THE WORD "SUBMARINE" WILL APPEAR IN THOSE TYPES  
15 OF COLUMNS.

16 IT'S JUST NOT -- THE RESULTS ARE VERY LIKELY GOING TO BE  
17 NONE, BUT THE BURDEN ASSOCIATED WITH GETTING THOSE PERMISSIONS,  
18 WHICH ARE THERE FOR A VERY, VERY GOOD REASON --

19 THE COURT: I UNDERSTAND THAT -- I GET THE PICTURE,  
20 MS. TREBICKA.

21 YOU SAID THERE WAS ANOTHER ISSUE OUTSIDE OF [REDACTED]

22 MS. TREBICKA: YES. AND THAT ISSUE IS [REDACTED]

23 BUT WE DID HAVE A PROPOSAL, YOUR HONOR, IF YOU WILL BEAR  
24 WITH ME. AND OUR PROPOSAL IS WE HAD A VERY, VERY HELPFUL AND  
25 EFFICIENT MEETING AND THE SPECIAL MASTER TODAY, AND I THANK HIM

1 FOR HIS TIME, IT INCLUDED GOOGLE EXPERTS AND PLAINTIFF'S  
2 EXPERTS. THE LAWYERS BARELY TALKED, WHICH I THOUGHT WAS  
3 ACTUALLY A VERY GOOD THING, WE GOT A LOT DONE.

4 MY PROPOSAL IS, OR OUR PROPOSAL IS TO LET THIS BE  
5 DISCUSSED IN THESE MEETINGS SO THAT WE ARE NOT UNDER AN  
6 OBLIGATION TO SEARCH [REDACTED] COLUMNS WHICH WILL TAKE WEEKS, I  
7 WANT TO SAY, BUT IT COULD ALSO BE MONTHS TO GET THOSE DUCKS IN  
8 A ROW TO BE ABLE TO GET IT DONE. AND FOR WHAT REASON? TO  
9 SEARCH SOMETHING WHERE THE RESULTS WILL ACTUALLY BE AN NULL  
10 SET.

11 SO I WOULD RESPECTFULLY REQUEST THAT YOUR HONOR CONSIDER  
12 THIS, ESPECIALLY IN LIGHT OF THE CONFUSION IN THE BEGINNING OF  
13 THE HEARING AS TO WHAT IS GOING TO BE SEARCHED AND FOR WHAT  
14 REASON, ET CETERA. I FEEL LIKE THIS IS SOMETHING THAT REALLY  
15 SHOULD BE DISCUSSED WITH A LOT MORE EXPERTS INVOLVED, UNDER THE  
16 GUIDANCE OF THE SPECIAL MASTER.

17 MR. STRAITE: MAY WE RESPOND QUICKLY?

18 THE COURT: NOT YET.

19 AND MS. TREBICKA, WHAT'S YOUR POINT WITH REGARD TO [REDACTED]  
20 THAT THAT HASN'T BEEN SEARCHED AT ALL?

21 MS. TREBICKA: NO, [REDACTED] -- YOUR HONOR, I WILL START, I  
22 MAY HAVE TO DEFER TO MY COLLEAGUE, MR. ANSORGE, BUT [REDACTED] HAS BEEN  
23 SEARCHED, IS MY UNDERSTANDING, FOR GAIA AND DOUBLE CLICK.

24 AS FAR AS ZWIEBACK, WHICH IS THE COOKIE THAT'S ENTIRELY  
25 RELATED TO GOOGLE SEARCH ONLY, WHICH IN OUR VIEW IS IRRELEVANT,

1 I BELIEVE THAT HAS NOT BEEN ON THE TABLE AND HAS NOT EVEN BEEN  
2 REQUESTED. SO MY UNDERSTANDING IS THAT IT'S SOMETHING WE AT  
3 LEAST NEED TO PUT SOME MORE THOUGHT TO AND DISCUSS WITH THE  
4 SPECIAL MASTER BEFORE CONSIDERING NEXT STEPS.

5 THE COURT: OKAY.

6 I WILL TAKE YOUR PROPOSAL UNDER CONSIDERATION. I WILL  
7 CONFER FURTHER WITH SPECIAL MASTER BRUSH AFTER TODAY'S HEARING,  
8 BUT I'M NOT KICKING BACK TO HIM, WE ARE HERE TODAY TO GET THIS  
9 ISSUE RESOLVED, AND THE TIME TO GET THIS ISSUE RESOLVED IS NOW.

10 WE ARE AT THE END, LADIES AND GENTLEMEN, WE ARE AT THE  
11 END. SO I WILL TAKE THE ARGUMENTS PRESENTED TODAY UNDER  
12 SUBMISSION AND I WILL ISSUE AN ORDER.

13 MS. TREBICKA: THANK YOU, YOUR HONOR.

14 MR. STRAITE: THANK YOU, YOUR HONOR.

15 THE COURT: LET'S TURN TO 1.21 WHICH RELATES TO  
16 30(B)(6) DEPOSITIONS.

17 MR. STRAITE: THANK YOU, YOUR HONOR. AND MS. WEAVER  
18 WILL BE ARGUING THIS ISSUE.

19 THE COURT: THANK YOU.

20 ALL RIGHT. WELL, THIS SOUNDS LIKE THAT THERE ARE SPECIFIC  
21 CATEGORIES THAT ARE IN DISPUTE. IT SOUNDS LIKE THE PARTIES  
22 NEED TO MEET AND CONFER ON VARIOUS SPECIFIC ISSUES, UNLESS  
23 THERE'S BEEN SOME PROGRESS SINCE THE CHART WAS SUBMITTED.

24 MS. WEAVER?

25 MS. WEAVER: YES. THANK YOU, YOUR HONOR.

1 I THINK THE PARTIES DO NEED TO MEET AND CONFER. GOOGLE  
2 WROTE IN ITS CHART THAT IT HAS OFFERED US DATES, BUT GOOGLE HAS  
3 NOT. AND OBVIOUSLY WE HAVE THE SIMILAR PROBLEM, THIS IS  
4 PULLING THE THREAD A BIT, YOUR HONOR, WE HAVE -- WE'VE NOTICED  
5 FOUR OTHER 30(B)(1) WITNESSES, BUT KNOWING WHO GOOGLE WILL  
6 IDENTIFY AND WHERE THEY COME OUT ON THE 30(B)(6) HAS REALLY  
7 FRUSTRATED OUR ABILITY TO IDENTIFY ADDITIONAL WITNESSES, AS WE  
8 ARE STRUGGLING TO WORK WITHIN THE CAP.

9 SO WE WOULD BE HAPPY TO MEET AND CONFER WITH GOOGLE.  
10 WE'VE TRIED ON A NUMBER OF OCCASIONS, AND WE WILL APPEAR IN  
11 PERSON, IN YOUR -- DOWN THE HALL FROM YOU, WHATEVER IT TAKES,  
12 BECAUSE IT DOES HAVE TO GET DONE AND WE DO WANT TO TAKE THESE  
13 DEPOSITIONS.

14 THERE ARE CERTAIN TOPICS THAT THEY DID NOT PRODUCE ANY  
15 DATES FOR, THE ONLY DATE THEY OFFERED WAS FOUR DAYS BEFORE THE  
16 30(B)(1) DEPOSITION OF THIS WITNESS, THEY TOLD US THAT HE WAS  
17 THEIR 30(B)(6) DESIGNEE, AND WE WEREN'T PREPARED AT THE TIME,  
18 AND WE OFFERED TO MEET AND CONFER.

19 THE COURT: LET ME ASK YOU THIS, MS. WEAVER. ARE  
20 THERE DISPUTES ABOUT THE SCOPE OF TOPICS, 30(B)(6) CATEGORIES,  
21 IS THAT A DISPUTE?

22 MS. WEAVER: IT'S UNCLEAR TO US, BECAUSE WE GOT A  
23 NOTICE, AND HERE GOOGLE IS SAYING THEY OFFERED US DATES, SO I  
24 GATHER THEY HAVE SOME OBJECTIONS, BUT THEY HAVEN'T TOLD US WHAT  
25 THEY ARE IN ANY MEET AND CONFER. WHEN WE SPOKE LAST THURSDAY,

1           THEY JUST SAID THEY WOULD OFFER US DATES.

2                   THE COURT:   OKAY.   SO IN ADDITION -- SO, ALL RIGHT.

3                   SCOPE OF 30(B)(6) NOTICE FROM PLAINTIFF'S POINT OF VIEW,  
4                   STATUS IS UNKNOWN, THAT IS WHETHER OR NOT THERE'S A DISPUTE.

5                   AND YOUR FURTHER CONCERN IS WHO IS TESTIFYING ON WHAT  
6                   DATES?   WHO ARE THE WITNESSES AND ON WHAT DATES AS TO WHAT  
7                   CATEGORIES?

8                   MS. WEAVER:   YES, EXACTLY.

9                   AND ONE OTHER CONCERN, YOUR HONOR, IS THE CAP, BECAUSE --

10                  THE COURT:   OKAY.   WELL, WE CAN'T ADDRESS THE CAP  
11                  UNTIL WE GET TO THESE OTHER ISSUES.

12                  MS. WEAVER:   EXACTLY.

13                  THE COURT:   ALL RIGHT.

14                  SO WHO HAS GOT THIS FOR GOOGLE TODAY, WOULD THAT BE YOU  
15                  MS. JENKINS?

16                  MS. JENKINS:   YES, THAT IS ME.

17                  I WOULD JUST LIKE TO START THAT THAT IS INCORRECT.   WE  
18                  HAVE SERVED RESPONSES AND OBJECTIONS TO THEIR 30(B)(6) NOTICE  
19                  WHICH STATED WHICH TOPICS WE WOULD BE PROVIDING A WITNESS FOR  
20                  AND WHERE WE WERE NARROWING THE SCOPE OF THE TOPICS BECAUSE WE  
21                  THOUGHT THAT IT WAS BEYOND WHAT WAS RELEVANT TO THE CASE.   IT  
22                  WAS ALSO NOTED IN THOSE RESPONSES AND OBJECTIONS --

23                  THE COURT:   WHEN WERE THOSE OBJECTIONS SERVED,

24                  MS. JENKINS?

25                  MS. JENKINS:   THEY WERE SERVED ON FEBRUARY 16TH.



1 THE PLAINTIFFS DIDN'T SERVE THEIR 30(B) (6) NOTICE UNTIL  
2 JAN 14TH. WE MET AND CONFERRED WITH THEM ON FEBRUARY 1ST AND  
3 DISCUSSED SOME OF THE ISSUES THAT WE HAD WITH THEIR TOPICS AND  
4 THEN SERVED THE RESPONSES AND OBJECTIONS ON THE 16TH.

5 ON THE 14TH, WE ACTUALLY PROVIDED THEM WITH SOME  
6 INFORMATION IN ADVANCE OF OUR TOPICS, BECAUSE WE WERE OFFERING  
7 DR. REISINGER, ONE OF THE DEPONENTS WHO WAS BEING -- HE WAS SET  
8 FOR A DEPOSITION AS A 30(B) (1) WITNESS, AND SO FOR TWO TOPICS  
9 THAT THEY HAD PROVIDED ON THE 14TH, WE GAVE THEM THE EXTENT OF  
10 THOSE TWO TOPICS THAT WE WOULD PROVIDE A WITNESS, AND WE  
11 DESIGNATED DR. EISINGER TO BE THE WITNESS ON THOSE TWO TOPICS.  
12 AND THE PLAINTIFFS REFUSED THAT DESIGNATION AND REFUSED TO TAKE  
13 THAT DEPOSITION AS A 30(B) (6) DEPOSITION. AND WE THINK THAT  
14 THE PLAINTIFFS HAVE NOW FOREGONE THE ABILITY TO GAIN 30(B) (6)  
15 TESTIMONY ON THOSE TWO TOPICS.

16 THE REASON THAT THEY PROVIDED TO US FOR NOT WANTING TO  
17 TAKE THESE 30(B) (6) DEPOSITIONS, PARTICULARLY FOR DR. EISINGER,  
18 IS THAT HE IS A GERMAN EMPLOYEE OF GOOGLE.

19 AND AS YOUR HONOR KNOWS, WE HAVE BEEN HAVING TO USE THE  
20 HAGUE CONVENTION TO HAVE DEPOSITIONS OF FOREIGN DEPONENTS. WE  
21 HAD GONE THROUGH THE HAGUE CONVENTION FOR DR. EISINGER, AND HAD  
22 SET UP HIS DEPOSITION, AND THEY SAID THAT THAT WOULD BE OKAY  
23 FOR A 30(B) (1) DEPOSITION BUT NOT FOR A 30(B) (6) DEPOSITION.  
24 WE REPEATEDLY ASKED THEM FOR ANY CASE LAW THAT WOULD SUPPORT  
25 THAT POSITION, BUT THEY DIDN'T PROVIDE US WITH ANY.

1 THE COURT: OKAY. THANK YOU, MS. JENKINS. I GET IT.  
2 THERE ARE DISPUTES ABOUND, ALL FRONTS, IT SOUNDS LIKE. AND  
3 THAT IS UNFORTUNATE AT THIS LATE DATE, AND ESPECIALLY AS ALWAYS  
4 HAPPENS.

5 AND AGAIN, WITH EXPERIENCED COUNSEL, YOU ALL ARE WELL  
6 AWARE OF THIS, WHEN YOU COME DOWN TO THE END OF DISCOVERY THERE  
7 IS ALWAYS A GREAT FLURRY AS BETWEEN 30(B)(1), 30(B)(6), DATES,  
8 TIMES, DOCUMENTS, ET CETERA.

9 SO THIS IS WHAT'S GOING TO HAPPEN IS AT THE CONCLUSION OF  
10 THE HEARING TODAY, THERE WILL BE AN IN-PERSON MEET AND CONFER  
11 BETWEEN PLAINTIFF AND DEFENDANTS. YOU CAN DO THAT BY VIDEO,  
12 BUT THIS WILL NOT BE BY E-MAIL OR BY PHONE, IT WILL BE EITHER  
13 IN PERSON OR BY VIDEO CONFERENCE.

14 AND YOU WILL -- AND THE PARTICIPANTS IN TODAY'S MEET AND  
15 CONFER ARE THOSE WHO HAVE THE AUTHORITY TO NEGOTIATE AND TO  
16 AGREE TO NEGOTIATE AND AGREE AS TO COMPROMISES.

17 AND YOU ARE GOING TO GET THIS WORKED OUT, AND YOU ARE  
18 GOING TO GET THIS SET. AND IF YOU CAN'T DO THAT, THEN YOU WILL  
19 BE BEFORE ME, AND WHETHER THAT'S TOMORROW OR THURSDAY, WILL  
20 DEPEND ON WHAT HAPPENS ON OUR NEXT ISSUE.

21 BUT AS FOR SCOPE OF DEPOSITION, AND I APPRECIATE OBVIOUSLY  
22 THERE ARE DIFFERENCES IN THE CALHOUN AND BROWN CASES, BUT IN  
23 BROWN, THE PLAINTIFFS BROUGHT THIS 30(B)(6) SCOPE ISSUE TO ME  
24 AS A SEPARATE DISPUTE. I REVIEWED THAT, I RULED ON IT, AND I  
25 ALSO MADE RULINGS RELATING TO DESIGNATING OTHER TESTIMONY. SO

1 THAT SHOULD BE INFORMATIVE AND INSTRUCTIVE TO THE PARTIES, AT  
2 LEAST IN PART AS TO MY APPROACH ON THIS.

3 SO YOU ALL WILL MEET AND CONFER FURTHER, AND IN A MOMENT  
4 WE WILL -- I WILL TELL YOU WHAT THE NEXT STEPS ARE IF YOU ARE  
5 NOT ABLE TO COME TO AN AGREEMENT. BUT THE TIME IS NOW, THIS IS  
6 GOING TO GET RESOLVED AND THESE DEPOSITIONS WILL GET TAKEN IN  
7 THE VERY NEAR FUTURE.

8 LET'S TURN BRIEFLY TO 2.1, WHICH IS WHAT WE TOUCHED ON  
9 SORT OF IN THE BROWN HEARING, WHICH IS GOOGLE'S MOTION FOR A  
10 PROTECTIVE ORDER WITH REGARDS TO LOG RETENTION POLICIES. AND I  
11 HAVE A COUPLE OF VERY BASIC QUESTIONS.

12 AGAIN, I'VE BEEN THROUGH THIS ISSUE AND I WON'T REPEAT MY  
13 POSITION ON REVISITING ORDERS, I WILL SAY I HAVE CONFERRED WITH  
14 THE SPECIAL MASTER ALSO WITH REGARDS TO LOGS THAT HAVE BEEN  
15 IDENTIFIED IN THE PROCESS BEFORE HIM.

16 AND MY FIRST QUESTION, MR. SCHAPIRO OR MS. TREBICKA, IS  
17 FOR THE [REDACTED] LOGS THAT WERE IDENTIFIED IN THE SPECIAL MASTER  
18 PROCESS, AND I KNOW THEN THERE'S ANOTHER [REDACTED] THAT THAT SET OF  
19 [REDACTED] IS THERE A LITIGATION HOLD IN PLACE FOR THOSE LOGS?

20 MS. TREBICKA: NO, YOUR HONOR.

21 THE IDEA BEHIND THE MOTION FOR PROTECTIVE ORDER WAS THAT  
22 PUTTING THESE LOGS ON A LITIGATION HOLD WOULD BE ESSENTIALLY  
23 IMPOSSIBLE, IT WOULD OVERRUN GOOGLE.

24 THE COURT: OKAY. I WANT YOU TO PUT THOSE ON A  
25 LITIGATION HOLD AS TO THOSE [REDACTED] FOR NOW, SAME THING WITH THE [REDACTED]

1 LOGS, IT SEEMS THAT WE HAVE BEEN AROUND AND AROUND THIS AND  
2 THAT THOSE DATA SETS SHOULD BE PRESERVED.

3 MS. TREBICKA: YOUR HONOR, THIS WAS THE ISSUE THAT WE  
4 LITIGATED IN JANUARY AND WE WON ON, THE MOTION FOR A PROTECTIVE  
5 ORDER, ON THE BASIS OF THE BURDEN THAT WE SUBSTANTIATED.

6 SO I GUESS I'M HAVING -- I JUST WANT TO MAKE SURE I  
7 UNDERSTAND, IS THIS A LITIGATION HOLD FOR PURPOSES OF THE  
8 PLAINTIFF'S DATA SO THAT IT CAN BE MANAGEABLE, OR CAN WE GET  
9 SOME CLARIFICATION?

10 THE COURT: OR UNIVERSAL.

11 MS. TREBICKA: RIGHT. WHICH IS NOT POSSIBLE, BUT WE  
12 WERE JUST BEFORE YOU IN JANUARY AND I --

13 THE COURT: I KNOW, I KNOW, I KNOW, THESE ASKS HAVE  
14 BEEN FURTHER HONED AND IDENTIFIED THAN JUST WHAT WE WERE  
15 DISCUSSING BACK IN JANUARY.

16 MR. BRUSH, WITH REGARDS TO THE [REDACTED] YOUR VIEW ON THE -- ON  
17 A HOLD THAT IS PRESERVING THE DATA?

18 MR. BRUSH: MAYBE I WILL ASK THIS BACK TO  
19 MS. TREBICKA.

20 I HEAR THAT -- LET ME SEE, I'M JUST THINKING THROUGH THIS,  
21 OUT OF THE [REDACTED] PLUS [REDACTED] ADDITIONAL DATA SOURCES, IS IT -- WHAT  
22 WILL BE MORE DOABLE AND AGREEABLE FOR GOOGLE TO DO A SUBSET OF  
23 THAT FROM A FIELD LEVEL? IF THE CONSTRUCT OF THE DATA IS TOO  
24 LARGE BECAUSE THE LOGS ARE TOO VOLUMINOUS, WHAT SUBSET ARE YOU  
25 ABLE TO PRESERVE TO MEET THE LITIGATION REQUIREMENTS?

1 MS. TREBICKA: YEAH, THAT'S A GREAT POINT, AND I  
2 WOULD LIKE TO JUST RESURFACE AGAIN FOR EVERYONE, A PRESERVATION  
3 PROPOSAL THAT GOOGLE HAD PROPOSED TO, I BELIEVE IT'S FILED ON  
4 THE DOCKET AS WELL, THAT ADDRESSES PRECISELY THIS ISSUE.

5 WE HAD A SERIES OF MEET AND CONFERS WITH PLAINTIFFS TO  
6 UNDERSTAND WHAT IT WAS THAT WAS MOST RELEVANT TO THEM, TO THEIR  
7 ABILITY TO PROVE THEIR CASE. AND ON THE BASIS OF THOSE VERY  
8 EXTENSIVE MEET AND CONFERS, WE CAME TO A PROPOSAL FOR A  
9 PRESERVATION OF CERTAIN DATA. THIS WAS WITH PLAINTIFF'S INPUT.

10 AND I BELIEVE THAT IS ON THE DOCKET AT -- IT WAS FILED IN  
11 AUGUST OF 2021, IT'S DOCKET 293-4. AND WE THINK THAT'S A VERY  
12 GOOD STARTING POINT. BUT TO ANSWER DIRECTLY THE QUESTION OF  
13 THE [REDACTED] LOGS, THAT IS PRECISELY THE ISSUE THAT WE LITIGATED AS  
14 FAR AS THE MOTION --

15 THE COURT: I KNOW THAT, MS. TREBICKA, BUT WE ARE  
16 MOVING FORWARD, WE ARE MOVING FORWARD.

17 AND WE'VE HAD A NUMBER OF DISCUSSIONS AROUND PRESERVATION,  
18 AND TO SPECIAL MASTER BRUSH'S POINT OF, IS THERE A SUBSET OF  
19 DATA -- AND I KNOW THAT THE PRESERVATION ISSUES IN PARTICULAR  
20 WERE REFERRED TO THE SPECIAL MASTER.

21 MS. TREBICKA: SO OUR PROPOSAL, YOUR HONOR, AND I  
22 THINK IT REALLY ATTEMPTS TO ADDRESS ALL THE CONCERNS THAT  
23 PLAINTIFFS HAVE RAISED SO FAR, AS WELL AS ALL THE EXTENSIVE  
24 HEARINGS AND OTHER GUIDANCE THAT WE'VE HAD FROM THE SPECIAL  
25 MASTER, AND I THINK THAT IS REALLY A VERY GOOD WAY FORWARD, IN

1 TERMS OF THE PRESERVATION OF POTENTIALLY RELEVANT DATA. AND I  
2 WOULD LIKE TO HEAR FROM SPECIAL MASTER BRUSH, BECAUSE I DO  
3 BELIEVE THAT THIS IS SOMETHING THAT IS WITHIN WHAT WE HAD  
4 ENVISIONED AS FAR AS THE PRESERVATION.

5 MR. BRUSH: YES. I CAN SPEAK TO THAT.

6 IN THAT SENSE, IS WE ARE REALLY -- IT WAS A MATTER OF  
7 TIMING, SO TO SPEAK, AS WE HAVE BEEN GOING THROUGH THIS  
8 PROCESS, NOW THAT WE HAVE A VERY GOOD UNDERSTANDING, AND WHAT I  
9 HOPE IS A LIGHT AT THE END OF THE TUNNEL OF HOW WE ARE GOING TO  
10 COMPLETE THE PROCESS AND THE UNDERSTANDING OF THE DATA SOURCES,  
11 THAT WE CAN DEFINE THAT IN A WAY NOW OF HOW WE ARE GOING TO  
12 MOVE FORWARD.

13 MY SUGGESTION IS WE HAVE A MEET AND CONFER ON THIS SOONER  
14 RATHER THAN LATER, IDEALLY TOMORROW, SO WE CAN GET THIS DOWN ON  
15 PAPER, WE CAN GET SOMETHING SUBMITTED AS TO WHAT THE  
16 PRESERVATION IS GOING TO LOOK LIKE IN A WAY THAT DOES BALANCE  
17 THE NEED OF THE LITIGATION PRESERVATION NEEDS, BUT ALSO IS  
18 WITHIN REASONABLE SCOPE OF THE TECHNOLOGY AND CAPABILITIES OF  
19 GOOGLE'S TEAM SO WE ARE NOT AGAIN HAVING TO PUT TOO MUCH ON  
20 THEM IN A WAY THAT CAN'T BE BENEFICIAL.

21 MS. TREBICKA: THAT MAKES A LOT OF SENSE TO US,  
22 YOUR HONOR.

23 MR. STRAITE: AND YOUR HONOR, TO MAKE THAT PROCESS  
24 WORK, AND WE APPRECIATE THE SPECIAL MASTER TRYING TO FIND A  
25 PRESERVATION PROPOSAL THAT COULD WORK, THE ONE THAT'S ON THE

1 DOCKET WON'T WORK, BUT THIS IS A REALLY GOOD IDEA. THE BEST  
2 WAY TO PROCEED, FROM PLAINTIFF'S PERSPECTIVE, WOULD BE TO  
3 FINALLY GET PRODUCTION OF THE ALREADY COLLECTED AND IDENTIFIED  
4 PLAINTIFF DATA FROM EARLIER IN THE CASE THAT GOOGLE HAS ALREADY  
5 PULLED THAT HAS NOT BEEN PRODUCED.

6 WE KNOW THAT ON NOVEMBER 14TH, YOUR HONOR ORDERED THAT  
7 GOOGLE PROVIDE AN UNDER OATH DECLARATION THAT IT'S BEEN  
8 PRODUCED. THAT WAS NOT COMPLIED WITH. INSTEAD, THE GOOGLE  
9 EMPLOYEE PUT A DECLARATION ON THE DOCKET, DOCKET 383, THAT SAID  
10 IT WAS DONE OR WAS IN PROCESS, AND IT WAS ONLY FOR RELEVANT  
11 DATA.

12 SO IT WOULD BE REALLY USEFUL, TO MAKE TOMORROW'S MEET AND  
13 CONFER WORK, WOULD BE JUST TO PRODUCE EVERYTHING THAT GOOGLE  
14 HAS ALREADY PULLED AND IDENTIFIED FOR THE NAMED PLAINTIFFS, GET  
15 THAT PRODUCED, BECAUSE THAT COULD STEER A LOT OF OUR  
16 CONVERSATION TOWARD A SENSIBLE COMPROMISE.

17 THE COURT: WE HAD THIS DISCUSSION A FEW MOMENTS AGO  
18 IN BROWN, OR AT LEAST A RELATED DISCUSSION.

19 MR. STRAITE: EXACTLY.

20 SO IT'S DIFFERENT FOR CALHOUN, BECAUSE FOR CALHOUN WE  
21 IDENTIFIED THE NAMED PLAINTIFF IDENTIFIERS IN THE COMPLAINT.

22 SO THAT'S WHY THERE'S A DIFFERENT POSTURE IN THE TWO  
23 CASES. WE HAD ALL THE ID, THE ZWIEBACK IDENTIFIERS AND GAIA,  
24 THOSE WERE IN THE SEALED COMPLAINT, THE REDACTIONS, SO I THINK  
25 THAT'S WHY GOOGLE HAS ALL THAT DATA FOR OUR PLAINTIFFS. IT'S A

1 GREAT STARTING PLACE, WE DON'T UNDERSTAND WHY IT WASN'T  
2 PRODUCED PURSUANT TO YOUR HONOR'S ORDER. PARAGRAPH 1 OF  
3 EXHIBIT 1 THAT RELATES TO CALHOUN IN YOUR ORDER OF  
4 NOVEMBER 14TH.

5 SO THAT WOULD BE, LET'S NOT GO BACK, LET'S GO FORWARD, HOW  
6 DO WE MAKE TOMORROW'S MEET AND CONFER WORK? THAT'S THE BEST  
7 WAY TO MAKE A COMPROMISED DISCUSSION WORK, IS TO GET THAT DATA  
8 PRODUCED.

9 MR. SCHAPIRO: SO YOUR HONOR, MR. STRAITE IS RIGHT  
10 THAT CALHOUN AND BROWN ARE DIFFERENTLY SITUATED IN THIS REGARD.  
11 AND SO LET ME ELABORATE ON SOME OF THE THINGS THAT I WAS  
12 STARTING TO SAY ABOUT BROWN.

13 THIS WOULD BE A SUBSTANTIAL STEP BACKWARDS, IT WOULD BE  
14 HITTING THE RESET BUTTON ON A METHODOICAL PROCESS THAT HAS BEEN  
15 UNDERWAY FOR SOME MONTHS. THE PROCESS HAS BEEN, IDENTIFY  
16 SOURCES AND PRODUCE DATA, AND FROM THAT, IDENTIFY MORE AND  
17 SEARCH AND PRODUCE MORE.

18 AND NOW WHAT'S HAPPENING, I THINK, IS THROUGH THAT  
19 PROCESS, THEY DIDN'T FIND WHAT THEY WANTED, SO THEY ARE ASKING  
20 FOR WHAT IS ESSENTIALLY A FISHING EXPEDITION IN THE FINAL WEEK  
21 OF DISCOVERY, IN LIEU OF THE SPECIAL MASTER.

22 THE COURT: WELL ACTUALLY, THE REQUEST, MR. SCHAPIRO,  
23 AND I APPRECIATE THE ARGUMENT AND --

24 MR. SCHAPIRO: THANK YOU.

25 THE COURT: -- AND I UNDERSTOOD IT IN BROWN, BUT



1 HERE, AS I UNDERSTAND IT, IT'S, WELL, PLAINTIFF'S SPECIFIC DATA  
2 WAS ALREADY IDENTIFIED. AND, YOU KNOW, MAYBE IT'S HERE, RIGHT,  
3 IT'S BEEN IDENTIFIED. AND AS TO THE NAMED PLAINTIFFS, THAT  
4 BLOCK OF INFORMATION CAN BE TURNED OVER SEPARATE FROM ALL OF  
5 THE SEARCH AND ITERATIVE SEARCHES AS TO PLAINTIFFS GENERALLY,  
6 OR PUTATIVE PLAINTIFFS, PUTATIVE CLASS MEMBERS, THAT HAS BEEN  
7 THE SUBJECT OF THE PROCESS.

8 MR. SCHAPIRO: SO IT TOUCHES ON -- AS DESIGNED, IT  
9 TOUCHES ON, BECAUSE WE ARE BEING OVERINCLUSIVE IN TERMS OF WHAT  
10 WE PRESERVED, RIGHT, THIS IS LOOKING FOR WHAT DID YOU PRESERVE.  
11 AND YOU WILL RECALL, THIS IS WHEN WE WERE EXPLAINING WHY ENTIRE  
12 LOGS CANNOT BE PRESERVED.

13 AND SO WE PRESERVED ANYTHING THAT MIGHT IN SOME WAY TOUCH  
14 ON ANY OF THESE IDENTIFIERS THAT WERE PROVIDED TO US. AND THEN  
15 WE OBJECTED WHEN THEY ASKED FOR ALL OF IT, AND WE CAME TO YOU,  
16 AND THERE'S BEEN A BACK AND FORTH WITH THE SPECIAL MASTER.

17 AND I DO TAKE ISSUE WITH MR. STRAITE'S SUGGESTIONS THAT WE  
18 HAVE SOMEHOW THUMBED OUR NOSE AT AN ORDER, BECAUSE I WOULD SAY  
19 PRETTY MUCH EVERY SPECIAL MASTER, THEY HAVE MADE THIS ARGUMENT,  
20 AND IF THE SPECIAL MASTER THOUGHT WE WERE THUMBING OUR NOSE AT  
21 AN ORDER, YOU WOULD HAVE HEARD ABOUT IT A LONG TIME AGO.

22 INSTEAD, WE WERE GOING FORWARD AND SAYING OKAY, IN THIS  
23 BIG UNIVERSE OF THINGS THAT MIGHT TOUCH ON SOME OF THE  
24 PLAINTIFFS, HOW CAN WE GET TO WHAT'S ACTUALLY USEFUL AND AT THE  
25 CORE OF THIS CASE. AND WHEN I SAY IT JUST TOUCHES ON

1 PLAINTIFF -- NOW FIRST OF ALL, A LARGE PORTION OF OUR, OR A  
2 SUBSTANTIAL PORTION OF IT, I THINK HAS ALREADY BEEN PRODUCED,  
3 BECAUSE SOME OF IT FEEDS INTO MY ACTIVITY OR SOME OF IT IS WHAT  
4 IS CALLED GAIA KEY.

5 THE COURT: THAT'S FINE. I GET THAT.

6 MR. SCHAPIRO: BUT OTHER INFORMATION HERE, FOR  
7 EXAMPLE, THIRD PARTY CONFIDENTIAL INFORMATION OF OUR  
8 PUBLISHERS, AS TO WHICH WE HAVE AN OBLIGATION BEFORE WE TURN  
9 ANYTHING OVER TO ANYONE, TO PROVIDE NOTICE FOR EACH OF THESE  
10 LOGS, THERE IS SENSITIVE DATA RELATING TO PRODUCTS THAT HAVE  
11 NOTHING TO DO WITH THIS CASE. SO WE WERE SUBSTANTIALLY  
12 OVERINCLUSIVE.

13 AND I GUESS MY SUGGESTION WOULD BE IF THERE IS SOME ORDER  
14 TO TURN ALL OF THIS OVER, WE THINK IT SHOULD BE CONCEIVED OF,  
15 AND I WOULD ASK YOUR HONOR TO RECONSIDER THAT, BECAUSE IT SEEMS  
16 LIKE YOU MIGHT BE LEANING THAT WAY, BUT THAT SHOULD BE  
17 CONSIDERED NOT THE START, I THINK IT'S DESCRIBED A MOMENT AGO  
18 AS THE STARTING POINT, BUT ESSENTIALLY AN ENDING POINT.

19 BECAUSE HERE WE ARE. AND SO FINE, IN LIEU OF THIS PROCESS  
20 THAT WE HAVE BEEN WORKING ON WHERE --

21 THE COURT: ALL RIGHT. LET ME STOP YOU THERE,  
22 MR. SCHAPIRO.

23 OKAY. I DO -- I TAKE THE POINT ABOUT PRESERVATION AND THE  
24 PRESERVATION PLAN WITH REGARDS TO THE [REDACTED] LOGS AND THE [REDACTED] LOGS,  
25 AND THEN ANY OTHER LOGS THAT ARE IDENTIFIED BY THE SPECIAL

1 MASTER THROUGH THIS PROCESS. AND I RECALL, AND I HAVE RETURNED  
2 TO FROM TIME TO TIME, THE PRESERVATION PLAN THAT WAS PROPOSED  
3 BY GOOGLE LAST YEAR, I THINK IT WAS IN AUGUST, AND IT HAS BEEN  
4 THE SUBJECT OF ONGOING DISCUSSIONS WITH THE SPECIAL MASTER.  
5 AND I THINK THAT RETURNING THAT AND MOVING THAT ISSUE UP, THERE  
6 ARE MANY ISSUES BEFORE THE SPECIAL MASTER, BUT THAT I WANT  
7 TO -- IF IT RETURNS TO THE SPECIAL MASTER, IT'S GOING TO HAVE  
8 SOME VERY SPECIFIC GUIDELINES AND PARAMETERS AS TO WHAT'S GOING  
9 TO HAPPEN AND WHEN IT'S GOING TO HAPPEN, BECAUSE AGAIN, WE ARE  
10 AT THE END OF THE PROCESS.

11 AND I APPRECIATE YOUR REQUEST, MR. STRAITE, BUT I DON'T  
12 THINK THAT THAT NECESSARILY FOLLOWS, TURN ALL OF THIS OVER AND  
13 THEN WE CAN START TALKING ABOUT PRESERVATION.

14 BUT I WILL CONFER WITH THE SPECIAL MASTER AND YOU WILL GET  
15 MY ORDER ON HOW WE ARE GOING TO PROCEED.

16 MR. BARNES? BRIEFLY.

17 MR. BARNES: YES. BRIEFLY, YOUR HONOR.

18 I THINK THERE WERE REALLY TWO SEPARATE ISSUES. THE  
19 PRESERVATION ORDER, I THINK IS ABOUT CLASS-WIDE DATA. THE  
20 PRESERVED DATA IS ABOUT --

21 THE COURT: I GOT IT.

22 MR. BARNES: AND JUDGE VAN KEULEN, THERE'S SOMETHING  
23 WE LEARNED ON FRIDAY THAT I THINK YOU OUGHT TO KNOW.

24 AMONGST THOSE LOGS THAT WERE PRESERVED BUT NOT PRODUCED,  
25 ARE [REDACTED] LOGS FOR WHICH GOOGLE TOLD US THEY HAD A NULL SET

1 PRODUCTION FOR OUR PLAINTIFFS. SO WE BELIEVE THERE EXISTS DATA  
2 THAT GOOGLE HAS PRESERVED THAT, THROUGH THIS SEARCH PROCESS,  
3 RETURNED A NULL SET.

4 AND SO OUR POINT IS RATHER THAN DO A SEARCH FOR THOSE LOGS  
5 HOW ABOUT JUST HAVE GOOGLE PRODUCE WHAT WAS ALREADY PRESERVED,  
6 BECAUSE WE SHOULDN'T BE SEARCHING FOR DATA THAT GOOGLE ALREADY  
7 HAS.

8 AND OUR EXPERTS ALL SAY, LOOK, TO ITERATE ON THIS SEARCH  
9 PROCESS, THE MOST IMPORTANT THING WE CAN HAVE IS THE DATA  
10 GOOGLE HAS ALREADY COLLECTED AND HAS. AND IF THEY CAN DO THAT,  
11 DR. SHAFIQ TOLD US THIS FOR MONTHS, WHY CAN'T THEY JUST GIVE US  
12 THE DATA THAT THEY ALREADY HAVE ABOUT OUR PLAINTIFFS, AND THEN  
13 I CAN COME UP WITH THE SECOND ROUND --

14 THE COURT: ALL RIGHT. MR. BARNES, YOU ARE FURTHER  
15 ARGUING MR. STRAITE'S POINT, WHICH I APPRECIATE, BUT I'M GOING  
16 TO STOP YOU.

17 MR. STRAITE: I DID WANT TO SPEAK ON A POINT OF FACT  
18 THAT WAS INCORRECT, FOR THE RECORD.

19 THE COURT: NO. WE ARE GOING TO HOLD OFF RIGHT  
20 THERE, OKAY.

21 AND WHAT I'M GOING TO DO IS -- WHAT WE ARE GOING TO DO IS  
22 I WANT TO TURN BRIEFLY TO 2.17, AND THEN WE ARE GOING TO TAKE A  
23 RECESS AND WE WILL RECONVENE SHORTLY, OKAY.

24 MR. MAO: SORRY, JUDGE, CAN I JUST CORRECT SOMETHING?

25 THE COURT: NO, MR. MAO, YOU MAY NOT. I WILL GIVE

1       YOU A CHANCE AT THE END.

2           AT 2.17, WITH REGARDS TO THE REQUESTS FOR ADMISSION AND  
3 AUTHENTICATION, OBVIOUSLY DEALING WITH AUTHENTICATION OF  
4 DOCUMENTS TO THE RFA PROCESS GENERALLY LEADS TO A STIPULATION  
5 AS TO PROCESS. I DO SEE THAT IN GOOGLE'S PORTION IT SAYS, WE  
6 MADE A STIPULATION, THAT IS THE -- THAT'S A GOOD START, AND I  
7 TAKE PLAINTIFF'S POINT THAT OKAY, BUT THE STIP DOESN'T GO FAR  
8 ENOUGH.

9           AND AGAIN, COUNSEL YOU ARE GOING TO WORK THIS OUT. YOU  
10 DON'T NEED A STIPULATION, YOU DO NOT NEED RFA'S THAT COVER EACH  
11 AND EVERY POSSIBLE GROUNDS FOR ADMISSIBILITY. AND YOU ARE  
12 GOING TO MAKE THIS WORK. AND YOU ARE GOING TO ROLL UP YOUR  
13 SLEEVES, AND YOU ARE EXPERIENCED TRIAL COUNSEL ON BOTH SIDES,  
14 AND PREFERABLY SOMEONE WHO HAS ACTUALLY TRIED A CASE IN FRONT  
15 OF JUDGE GONZALEZ ROGERS KNOWS EXACTLY WHAT THIS NEEDS TO LOOK  
16 LIKE, AND THIS IS FRANKLY BORDERING ON THE RIDICULOUS.

17           SO THERE WILL BE A MEET AND CONFER, ALL WILL MEET AND  
18 CONFER. YOU WILL START IMMEDIATELY AFTER OUR HEARING TODAY.  
19 IF YOU CANNOT COME TO TERMS WITH A STIPULATION, YOU WILL BE  
20 BACK IN MY COURT. YOU KNOW WHAT, WE ARE GOING TO DO THIS  
21 THURSDAY AT 9:30, THURSDAY AT 9:30, I'M GOING TO SEND YOU DOWN  
22 THE HALL. YOU ARE GOING TO SIT IN A CONFERENCE ROOM AND YOU  
23 ARE GOING TO WORK IT OUT. AND YOU ARE GOING TO COME BACK INTO  
24 MY COURT AND REPORT TO ME ON THE STATUS OF YOUR PROGRESS EVERY  
25 HOUR ON THE HOUR, OKAY. THAT'S THURSDAY FOR DISPUTE 2.17. THE

1 PARTIES HAVEN'T AGREED TO A STIPULATION BEFORE THEN. WE WILL  
2 GET STARTED AT 9:30 A.M.

3 I'M GOING TO TELL YOU RIGHT NOW THAT I HAVE ANOTHER  
4 COMMITMENT FROM 11:30 TO 1:30, SO YOU WILL WORK THROUGH THAT  
5 TIME WITHOUT AN OPPORTUNITY TO REPORT TO ME, AND I HAVE A  
6 CRIMINAL DUTY CALENDAR AT 2:00.

7 SO MAYBE YOU SHOW UP, MAYBE YOU GET IT DONE BEFORE YOU  
8 SHOW UP. IF YOU HAVE TO SHOW UP, HOPEFULLY YOU GET IT DONE  
9 BETWEEN 9:30 AND 11:30 AND IF YOU DON'T, YOU ARE IN FOR THE  
10 LONG HAUL, BUT WE ARE GOING TO GET THIS DONE, OKAY.

11 AND I THINK JUST FOR CONVENIENCE OF THE COURT, ALTHOUGH I  
12 WOULD LIKE TO GET YOU IN ON THE 30(B)(6) ISSUE SOONER, IN  
13 DISPUTE 1.21, WE WILL DO IT THE SAME WAY, IT SHOULD BE TWO  
14 DIFFERENT TEAMS OF LAWYERS, YOU WILL BE IN TWO DIFFERENT ROOMS,  
15 ONE SET WORKING ON THE 30(B)(6) ISSUES, ONE WORKING ON THE RFA  
16 STIPULATION ISSUE, IF YOU ARE UNABLE TO COME TO AGREEMENTS  
17 BEFORE THEN.

18 MR. SCHAPIRO: THAT'S A HECK OF AN INCENTIVE,  
19 YOUR HONOR.

20 THE COURT: YEAH, THAT'S WHAT I FIGURED.

21 OKAY. AND YET, YOU KNOW, IT ACTUALLY WORKS OUT PRETTY  
22 PRODUCTIVE WHEN PEOPLE DO HAVE TO SHOW UP, THEY DO.

23 WE ARE GOING TO TAKE A 15-MINUTE BREAK. I'M GOING TO  
24 CONFER WITH SPECIAL MASTER BRUSH AND MR. SCHMIDT AND MY CLERK  
25 ON A COUPLE OF THE ISSUES THAT CAME UP IN OUR HEARING. WE WILL

1 DO THAT BY PHONE ON A SEPARATE LINE. YOU ALL CAN TURN OFF YOUR  
2 SCREENS AND STEP AWAY. AND WE WILL RECONVENE, MS. SUMMER CAN  
3 STRETCH HER FINGERS, AND WE WILL RECONVENE IN 15 MINUTES.

4 ALL RIGHT. WE ARE IN RECESS. THANK YOU.

5 (RECESS FROM 3:21 P.M. UNTIL 3:46 P.M.)

6 THE COURT: WE WILL NOTE FOR THE RECORD THAT THIS  
7 ENTIRE PROCEEDING, BOTH THE BROWN AND CALHOUN MATTERS ARE UNDER  
8 SEAL. WE HAVE BEEN CONDUCTING BY ZOOM IN A CLOSED WEBINAR.

9 OKAY. THANK YOU TO EVERYONE FOR YOUR PATIENCE. I  
10 APPRECIATE IT. I WANTED TO STEP BACK FOR A MOMENT AND GET  
11 CLARITY, BE SURE I CAN -- THAT COUNSEL UNDERSTAND WHAT IS STILL  
12 TO BE DONE BEFORE THE SPECIAL MASTER AT THE SESSION TOMORROW SO  
13 THAT YOU'VE GOT THE RIGHT FOLKS IN THE ROOM. TODAY'S SESSION  
14 WITH THE EXPERTS WAS PRODUCTIVE, SO THAT WAS GOOD.

15 MR. SCHAPIRO: I'M SORRY, YOUR HONOR. PEOPLE ON OUR  
16 TEAM AREN'T ABLE TO GET BACK IN. THEY SAY THAT THE HOST HAS  
17 LOCKED MEETING AND CAN'T JOIN. SORRY.

18 THE COURT: DID THEY LEAVE THE MEETING?

19 MR. SCHAPIRO: I DON'T KNOW. I DON'T BELIEVE SO. IF  
20 THEY DID, THEY SHOULDN'T HAVE. MR. ANSORGE AND MR. SPILLY, AT  
21 LEAST. IF THEY CAN'T COME BACK IN, I UNDERSTAND, ALTHOUGH I'M  
22 VERY SORRY FOR INTERRUPTING.

23 THE COURT: THAT'S ALL RIGHT.

24 THE CLERK: LET ME TRY TO UNLOCK IT AND SEE IF THEY  
25 WILL POP IN.

1 (PAUSE IN PROCEEDINGS.)

2 THE CLERK: I DON'T CURRENTLY HAVE ANY ATTENDEES,  
3 HAVE THEY TRIED TO JOINT BACK IN?

4 THE COURT: LEAVE IT UNLOCKED FOR JUST A MOMENT, IF  
5 YOU CAN, MS. FANTHORPE.

6 THE CLERK: I SEE THEM. THERE WE GO.

7 MS. WEAVER: WE LOOK FORWARD TO THE TIME WE CAN JUST  
8 WALK BACK IN THE ROOM.

9 THE CLERK: OKAY. THEY ARE BACK IN, I'M GOING TO  
10 LOCK IT.

11 MR. SCHAPIRO: SORRY. AND THANK YOU.

12 THE COURT: NOT A PROBLEM. THANK YOU FOR BRINGING IT  
13 TO OUR ATTENTION.

14 OKAY. I WANTED TO TAKE A BRIEF BREAK BECAUSE I WANTED TO  
15 SPEAK WITH SPECIAL MASTER BRUSH AND BE SURE THAT I UNDERSTOOD  
16 WHAT HE EXPECTS AND NEEDS TO BE IN THE ROOM TOMORROW WITH HIM  
17 TO DRIVE A COUPLE OF THESE OPEN ISSUES TO CLOSE.

18 AND I WANT TO BE SURE THAT COUNSEL KNOWS SO YOU'VE GOT THE  
19 RIGHT PEOPLE. AGAIN, TODAY'S SESSION WAS VERY PRODUCTIVE AND  
20 WE WOULD LIKE THE REMAINING SESSIONS THIS WEEK TO PROCEED IN  
21 THE SAME WAY.

22 SO IN THE BROWN MATTER, AS TO DISPUTE P24, THAT WAS  
23 ALREADY THE SUBJECT OF ONGOING DISCUSSIONS BEFORE THE SPECIAL  
24 MASTER WITH REGARDS TO THE DREML AND FLUME SEARCHES, AND THAT  
25 PROCESS WILL CONTINUE AS HE WORKED WITH YOU ON IT TODAY, AND



1 THAT PROCESS WILL CONTINUE TOMORROW, PER WHATEVER INSTRUCTIONS  
2 YOU PREVIOUSLY RECEIVED FROM HIM.

3 ADDITIONALLY, IN ARGUING THIS ISSUE P24, THE ISSUE CAME UP  
4 AS TO THE PRODUCTION OF DATA THAT IS SPECIFIC TO THE BROWN  
5 PLAINTIFFS. AND GOOGLE, I WANT TO BE SURE THAT YOU HAVE IN THE  
6 PRECEDING WITH SPECIAL MASTER BRUSH TOMORROW, THE PERSON OR A  
7 PERSON WHO CAN SPEAK TO HOW THOSE SEARCHES WERE DONE, THAT IS  
8 AS TO THE -- USING THE IDENTIFIERS FOR THE BROWN PLAINTIFFS,  
9 AND WHERE THAT, WHERE THE RESULTS OF THOSE SEARCHES IS NOW,  
10 WHAT FORM IS IT IN, WHERE IS IT, HOW THE SEARCH WAS DONE,  
11 WHAT'S THE CURRENT STATUS OF THAT DATA. OKAY?

12 MR. SCHAPIRO: YES.

13 MR. MAO: YOUR HONOR -- SORRY, JUDGE, I JUST WANT TO  
14 CLARIFY SOMETHING FOR THE RECORD.

15 THE COURT: YES, MR. MAO.

16 MR. MAO: THANK YOU.

17 SO PREVIOUSLY MR. SCHAPIRO AND MR. STRAITE SAID THAT THE  
18 BROWN PLAINTIFFS DID NOT PRODUCE OUR IDENTIFIERS. CLEARLY, AS  
19 YOU ARE JUST ACKNOWLEDGING RIGHT NOW, WE DID PROVIDE  
20 IDENTIFIERS FOR OUR PLAINTIFFS. AND THIS IS REGARDING THE  
21 PRESERVATION ISSUE.

22 MR. SCHAPIRO IS COMPLETELY INCORRECT IN TERMS OF US NOT  
23 PROVIDING IDENTIFIERS, PROVIDED GAIA ID'S.

24 THE COURT: OKAY. MR. MAO, WE ARE NOT GOING TO ARGUE  
25 THAT POINT NOW, OKAY. WHAT WE ARE DOING IS, IN WORKING THROUGH

1 THE ISSUES PRESENTED IN P24, THE REQUEST WAS MADE BY YOU TO  
2 TURN OVER AND PRODUCE ANY SPECIFIC BROWN PLAINTIFF DATA. AND  
3 MY NOTES REFLECT THAT MR. SHAPIRO INDICATED HE WAS GOING TO  
4 HAVE TO GO CHECK AND SEE WHAT EXACTLY THERE WAS.

5 SO I KNOW EACH SIDE HAS THEIR RECORD AS TO WHAT WAS DONE,  
6 AND THERE'S PROBABLY A LOT MORE AGREEMENT THAN DISAGREEMENT,  
7 THE QUESTION IS WHAT IS THE STATUS OR RESULT OF THOSE EFFORTS  
8 TODAY AND WHETHER OR NOT THAT IS SOMETHING THAT CAN BE TURNED  
9 OVER TO PLAINTIFFS, WHETHER IT CAN BE, WHETHER IT SHOULD BE.

10 AND SPECIAL MASTER BRUSH IS GOING TO WORK THROUGH THOSE  
11 ISSUES WITH THE PARTIES TOMORROW. AND THE FIRST QUESTIONS HE  
12 NEEDS ANSWERED IS, WHAT WERE THE IDENTIFIER, HOW WERE THE  
13 SEARCHES DONE, AND WHAT'S THE STATUS OF THAT DATA NOW?

14 AND MR. SCHAPIRO, YOU ARE NODDING, YOU'VE GOT THE BRIEF  
15 AND YOU ARE GOING TO GET THE RIGHT PERSON IN THE ROOM.

16 MR. SCHAPIRO: LET THE RECORD REFLECT I AM NODDING  
17 YES.

18 THE COURT: OKAY. THANK YOU.

19 AND MR. MAO, I'M CONFIDENT THAT PLAINTIFFS HAVE SOME VIEWS  
20 ON THIS AS WELL. AND AGAIN, BRING YOUR RIGHT PERSON AND -- BUT  
21 MR. BRUSH IS PREPARED TO ADDRESS THOSE ISSUES WITH THE PARTIES.

22 WE GET IT, WE HEAR IT, AND IT DOES RELATE TO THESE  
23 SEARCHES THAT ARE AT THE CORE OF THE REQUEST IN P24. WE ARE  
24 GOING TO GET THIS ISSUE CLOSED THIS WEEK. THERE'S GOING TO BE  
25 AN, OKAY, HERE'S WHAT'S GOING TO HAPPEN, HERE'S WHAT'S GOING TO

1 HAPPEN NEXT.

2 AND I'M JUST GOING TO REMIND ALL THE PARTIES THAT SOME OF  
3 THE ORDERS THIS WEEK, YOU ARE GOING TO THINK ARE IMPOSSIBLE AND  
4 YOU'RE NOT GOING TO WANT TO DO IT AND YOU ARE ALSO GOING TO BE  
5 FRUSTRATED AND FEEL LIKE YOU DON'T GET SOMETHING THAT YOU  
6 REALLY ABSOLUTELY HAVE TO HAVE, BUT YOU KNOW, WE ARE WORKING  
7 WITH ALL THE INFORMATION WE HAVE, AND THE COURT IS ABLY  
8 ASSISTED BY THE SPECIAL MASTER, BUT WE ARE GOING TO GET THIS  
9 DONE, AND GO ON FROM THERE.

10 MR. STRAITE: AND YOUR HONOR -- AND THANK YOU.

11 DAVID STRAITE FOR CALHOUN PLAINTIFFS.

12 I JUST WANT TO REITERATE, I'M GRATEFUL FOR YOUR ORDER FOR  
13 THE BROWN CASE, BECAUSE I MISSPOKE EARLIER WHEN I WAS HAVING A  
14 BACK AND FORTH REGARDING THE COMPARISON OF THE CASE. I  
15 MISSTATED THE FACTS.

16 AND MARK MAO IS CORRECT, I WAS WRONG, AND SO I'M GRATEFUL  
17 THAT YOU WANT DIDN'T MAKE A DECISION THAT WAS BASED ON ANYTHING  
18 WRONG THAT I SAID.

19 SO THANK YOU. I APOLOGIZE.

20 THE COURT: I KNOW COUNSEL IS ANXIOUS TO GET THE  
21 RECORD CORRECTED, BUT AGAIN, WE'VE GOT TO TAKE THIS IN THE  
22 SMALL PIECES THAT I CAN IDENTIFY AND DIGEST.

23 SO I THINK EVERYONE UNDERSTANDS WHERE WE ARE GOING FORWARD  
24 WITH REGARDS TO P24.

25 THE OTHER QUESTION THAT CAME UP IN MY DISCUSSION WITH THE

1 SPECIAL MASTER THAT I WANT TO BE SURE -- AND IT DOES RELATE TO  
2 THE PROCESS AND BRINGING P24 TO A CLOSE -- IS WHETHER SEARCHES,  
3 CAN LIVE ITERATIVE SEARCHES BE CONDUCTED? AS OPPOSED TO THIS,  
4 OKAY, WE NEED TERMS AND WE HAVE TO GO OVER HERE AND PLUG IN AND  
5 PROGRAM AND COME BACK TWO DAYS LATER, ET CETERA. CAN ITERATIVE  
6 SEARCHES BE CONDUCTED, ESSENTIALLY, REALTIME?

7 SPECIAL MASTER BRUSH, DID I GET THE QUESTION RIGHT, THAT  
8 WAS THE OTHER POINT YOU WANTED TO BE SURE THAT YOU COULD  
9 DISCUSS THAT WITH SOMEONE AT THE HEARING TOMORROW.

10 MR. BRUSH: YES. EXACTLY, YOUR HONOR.

11 AGAIN, THIS IS SOMETHING THAT I THINK WAS BROUGHT UP IN  
12 SOME EARLIER CONVERSATIONS AS WELL AS TODAY, IS IF FOLKS CAN BE  
13 AVAILABLE IN A WAY THAT CAN FACILITATE ACTIVE SEARCHES SO WE  
14 CAN AVOID SOME OF THE BACK AND FORTH.

15 YOU KNOW, OFTEN WHAT WE HAVE BEEN DOING IS INQUIRIES ARE  
16 BEING PRESENTED TO ME, WE PASS THEM OFF, THEY GO TO GOOGLE, AND  
17 IT GOES THROUGH THESE SERIES, SO IF WE CAN CUT THOSE ALL DOWN,  
18 IF WE HAVE THE RIGHT PEOPLE IN THE ROOM, IF WE CAN CONSTRUCT  
19 SOME OF THESE THINGS LIVE, TEST OUT SOME OF THESE QUERIES BEING  
20 RUN AND TO PROVIDE SOME RESULTS, IT WOULD, I THINK, HELP  
21 EXPEDITE THE REFINEMENT OF THE ITERATIVE SEARCHES, GET THEM  
22 DONE, AND THEN MOVING TO HISTORICAL SEARCHES AS QUICKLY AS  
23 POSSIBLE.

24 THE COURT: OKAY.

25 AND THE BACK AND FORTH PROCESS AND THE COUPLE OF DAYS,

1 ET CETERA, WAS THE WAY IT WAS ORIGINALLY SET UP IN THE PROCESS  
2 THAT WAS ADOPTED BY THE COURT BACK IN NOVEMBER. AND IN MY  
3 ORDER ADOPTING THAT, OF COURSE I MADE CLEAR THAT THE SPECIAL  
4 MASTER HAS THE POWER TO ADJUST THAT AS NEEDED. AND NOW WE ARE  
5 AT THE END, AGAIN, WE ARE WRAPPING UP THE SEARCH AND DISCOVERY  
6 PROCESS.

7 SO IF SPECIAL MASTER BRUSH -- IF YOU NEED TO COLLAPSE  
8 THOSE TIME FRAMES, YOU CAN DO THAT. AND THE PARTIES, YOU ARE  
9 DIRECTED TO WORK WITH THE SPECIAL MASTER IN THAT REGARD. AND  
10 THE FIRST ISSUE IS, CAN WE DO THESE SEARCHES BASICALLY IN  
11 REALTIME? SO BE SURE YOU'VE GOT SOME FOLKS WHO COULD SPEAK TO  
12 THAT.

13 OKAY. LET'S TURN TO CALHOUN, THE OTHER BROWN ISSUES HAVE  
14 BEEN ARGUED TODAY AND I WILL ISSUE AN ORDER ON THOSE. AND THE  
15 BROWN PLAINTIFFS ARE GOING TO LET ME KNOW THEIR NEXT -- THEY  
16 CAN IDENTIFY THE NEXT THREE PRIORITIES. I WENT FROM 2 TO 3,  
17 BUT I HAVE NOT YET DECIDED HOW I WILL HANDLE THE ADDITIONAL  
18 DISPUTES.

19 THERE WERE NINE DISPUTES TOTAL IN BROWN, AND I KNOW YOU  
20 ALL KNOW YOU ARE NOT MY ONLY CASE, BUT I WILL LET YOU AT LEAST  
21 SUBMIT PRIORITIES.

22 THAT WILL GO FOR CALHOUN AS WELL. YOU CAN MEET AND CONFER  
23 WITH YOUR TEAM, YOU CAN SEND AN E-MAIL TO MS. FANTHORPE AND  
24 IDENTIFY FOR HER ANOTHER THREE DISPUTES.

25 AND GOOGLE, IT GOES FOR YOU TOO, IT IS THREE PER SIDE, AND

1 I APPRECIATE IF YOU DON'T HAVE DISPUTES OTHER THAN THOSE THAT  
2 ARE BEING RAISED BY THE PLAINTIFFS, THAT YOU ARE NOT  
3 MANUFACTURING DISPUTES JUST TO HAVE THREE ON YOUR SIDE. SO  
4 THANK YOU FOR RESISTING THAT.

5 OKAY.

6 MR. MAO: THANK YOU, JUDGE.

7 THE COURT: IN CALHOUN, I WILL ISSUE AN ORDER AS TO  
8 1.15, AS TO 1.21, THE 30(B)(6) DEPOSITIONS, AND 2.17, THE RFA  
9 DISPUTE, I THINK YOU ALL KNOW YOU'VE GOT YOUR MEET AND CONFER  
10 ORDERS, OTHERWISE I WILL SEE YOU THURSDAY IN MY COURTROOM AT  
11 9:30.

12 LET MS. FANTHORPE KNOW NO LATER THAN 5:00 ON WEDNESDAY,  
13 PLEASE, 5:00 ON WEDNESDAY, IF YOU NEED TO GO FORWARD WITH THAT  
14 HEARING OR NOT.

15 MR. SCHAPIRO: CAN I RAISE ONE THING WITH REGARD TO  
16 THAT, THAT I THINK SHOULD BE UNCONTROVERSIAL ABOUT THE RFA'S?

17 THE COURT: YES.

18 MR. SCHAPIRO: YOUR HONOR, I'M VERY MUCH HOPEFUL THAT  
19 IT WILL NOT BE NECESSARY AND SO IT WILL ALL BE WORKED OUT BY  
20 THURSDAY, I HOPE. BUT THE RFA'S TECHNICALLY ARE DUE TODAY AND  
21 WE ARE TRYING TO OBVIATE THE NEED. SO CAN WE HAVE ON THE  
22 RECORD JUST AN EXTENSION UNTIL THURSDAY OR WHATEVER SO THAT WE  
23 ARE NOT FOUND TO HAVE FAILED TO RESPOND?

24 THE COURT: YES.

25 MS. WEAVER: WE WOULD BE HAPPY TO AGREE WITH THAT.

1 MR. SCHAPIRO: SHOULD WE MAKE IT FRIDAY IN CASE WE  
2 ARE ACTUALLY IN YOUR COURTROOM ON THURSDAY?

3 THE COURT: IN CASE YOU GET VERY CLOSE, YOU CAN HAVE  
4 AN EXTENSION UNTIL FRIDAY THE 4TH.

5 MR. SCHAPIRO: THANK YOU. I DON'T THINK WE WILL NEED  
6 IT.

7 THE COURT: AND I KNOW, GOOD LAWYERS THAT YOU ARE,  
8 YOU WILL MEMORIALIZE THAT IN WRITING AS BETWEEN THE TWO OF YOU.

9 OKAY. THEN LET'S TURN TO 2.1, WHICH WAS THE SUBJECT OF  
10 MUCH DISCUSSION, BOTH WITH REGARDS TO A PRESERVATION PLAN, AS  
11 WELL AS PRODUCTION OF CALHOUN PLAINTIFF'S DATA.

12 WITH REGARDS TO THE PRESERVATION PLAN, THE PARTIES ARE  
13 GOING TO WORK THAT OUT IN FRONT OF SPECIAL MASTER BRUSH. IT'S  
14 ACTUALLY BEEN ON HIS PLATE FOR QUITE A WHILE, AND A LOT OF  
15 THESE ISSUES HAVE TOUCHED ON IT AND NOW IT HAS COME TO A HEAD.

16 SO YOU NEED PEOPLE WITH HIM TOMORROW WHO HAVE FULL  
17 AUTHORITY AND ABILITY TO NEGOTIATE AND COMPROMISE. AND THE  
18 293-4 -- DOCKET 293-4 MAY SERVE AS A STARTING POINT. I KNOW  
19 THERE HAVE BEEN -- I THINK THE PARTIES ALREADY KIND OF MOVED  
20 PAST THAT, CERTAINLY THE PLAINTIFFS HAD VIEWS ON THAT, SO YOU  
21 NEED TO HAVE YOUR -- OR EXCUSE ME, GOOGLE HAD VIEWS ON THAT.  
22 SO YOU NEED TO ROLL UP YOUR SLEEVES, GET THAT DONE.

23 AND YOUR WORK WITH THE SPECIAL MASTER, YOU WILL HAVE JUST  
24 A COUPLE OF DAYS TO HAMMER OUT AND COME TO TERMS ON A  
25 PRESERVATION PLAN. AND THAT WILL BE DONE AND SUBMITTED TO ME

1 NO LATER THAN MARCH 3RD, MARCH 3RD.

2 SPECIAL MASTER BRUSH, IF YOU THINK THERE'S BEEN PRODUCTIVE  
3 PROGRESS AND A SMALL ADDITIONAL AMOUNT OF TIME IS NEEDED, THAT  
4 IS WITHIN YOUR POWER TO EXTEND.

5 MR. BRUSH: UNDERSTOOD, YOUR HONOR.


6 THE COURT: ALL RIGHT.

7 AND THEN THE OTHER ISSUE IN 2.1 IS ALSO THE PRODUCTION OF  
8 THE CALHOUN PLAINTIFF INFORMATION, AND THAT WILL BE THE SUBJECT  
9 OF THE SIMILAR DISCUSSION AS IN BROWN, WHICH IS WHAT DATA WAS  
10 COLLECTED AND WHERE IS IT NOW.

11 AND I APPRECIATE THE POSTURE OF THE CASES ARE DIFFERENT,  
12 THE RESPONSES TO THAT WILL BE DIFFERENT, AND SPECIAL MASTER  
13 BRUSH IS AWARE OF THAT, HE JUST WANTS TO BE SURE HE'S GOT THE  
14 RIGHT PEOPLE WHO CAN WORK THROUGH THAT.

15 MR. BARNES: JUDGE VAN KEULEN, MAY I ASK A CLARIFYING  
16 QUESTION?

17 THE COURT: YES, MR. BARNES.

18 MR. BARNES: I THINK, MR. SCHAPIRO, WE KNOW OF   
19 LOGS.

20 THE COURT: MR. BARNES, WE ARE GOING TO START --

21 MR. BARNES: I DON'T WANT TO ARGUE, I JUST WANT TO  
22 KNOW IF IN BROWN IT WAS, HEY, IDENTIFY THAT WHICH YOU'VE DONE.

23 BASED ON MR. SHAPIRO'S COMMENTS TODAY, I THINK IT'S  
24 BROADER THAN THAT, AND I JUST WANT TO MAKE -- GET CLARITY THAT  
25 IT IS, IF GOOGLE HAS PRESERVED IT, WE ARE GOING TO FIND OUT



1 INDEED WHAT WAS PRESERVED.

2 THE COURT: YOU ARE GOING TO HAVE THAT CONVERSATION  
3 WITH THE SPECIAL MASTER.

4 MR. BARNES: OKAY. THANK YOU.

5 THE COURT: OKAY. WHICH IS, I THINK PRETTY MUCH WHAT  
6 I HAD SAID, WHICH IS WHAT WAS PRESERVED AND WHAT'S THE STATUS  
7 OF IT NOW.

8 SO ALL RIGHT. AND THEN AS TO THE REMAINING ISSUES FOR  
9 CALHOUN, I THINK WE HAVE ADDRESSED THOSE, AND I WILL SEE YOU IF  
10 NECESSARY.

11 ANY QUESTIONS? WE'VE COVERED A LOT OF GROUND, SOME OF IT  
12 HAS ACTUALLY BEEN FORWARD PROGRESS, SOME OF IT MAYBE NOT SO  
13 MUCH, BUT I APPRECIATE EVERYONE'S PATIENCE AND DILIGENCE.

14 ANYTHING ELSE IN BROWN FROM THE PLAINTIFFS? I THINK YOU  
15 ARE CLEAR WHAT'S GOING TO HAPPEN WITH THE SPECIAL MASTER. YOU  
16 WILL GET AN ORDER FROM ME ON THE OTHER ISSUES.

17 ANYTHING ELSE THAT MUST BE RAISED? MR. MAO?

18 MR. MAO: NO. WE UNDERSTAND THAT WE NEED TO GIVE YOU  
19 ANOTHER THREE NEXT PRIORITY, IS THERE A TURNAROUND ON THAT,  
20 JUDGE, I PRESUME TOMORROW OR TONIGHT?

21 THE COURT: YEAH, TOMORROW IS FINE. I'M NOT GOING TO  
22 GET TO IT RIGHT AWAY, I'VE GOT A FEW OTHER THINGS TO KEEP ME  
23 BUSY.

24 AND AGAIN, I HAVEN'T LOOKED AT THE OTHER DISPUTES YET, SO  
25 I CAN'T EVEN TELL YOU THAT I'M ONLY GOING TO GET TO THREE OR

1 I'M NOT GOING TO GET TO ANY OR WHATEVER.

2 MR. MAO: I APOLOGIZE, JUDGE.

3 I SEE MY COLLEAGUE JAMES LEE AND MR. REBLITZ-RICHARDSON  
4 JUST APPEARED AND THEY MIGHT WANT TO SAY SOMETHING, SO I WILL  
5 CEDE THE FLOOR TO THEM.

6 THE COURT: ANYTHING FINAL? WE ARE GOING TO BRING  
7 THIS TO A CLOSE. NO? MR. LEE?

8 MR. LEE: I JUST WANTED TO SAY THANK YOU, JUDGE.

9 MR. MAO: THANK YOU MR. BRUSH.

10 MR. SCHAPIRO: MY COLLEAGUE, MS. JENKINS, HAS ONE  
11 FINAL THING.

12 THE COURT: EXCELLENT. MS. JENKINS?

13 MS. JENKINS: YES. WE HAVE ONE SMALL HOUSEKEEPING  
14 ISSUE.

15 WE HAVE A DEPOSITION ON WEDNESDAY OF MS. JUNE IN BROWN.  
16 AND ON FRIDAY, THEY TOLD US THEY MIGHT BE CANCELLING THAT  
17 DEPOSITION. AND WE WOULD LIKE TO KNOW NOW, IF POSSIBLE, OR  
18 WITHIN A VERY SHORT PERIOD OF TIME AFTER THIS HEARING, IF THEY  
19 WILL BE CANCELLING THAT DEPOSITION.

20 THE COURT: OKAY. WELL, YOU COULD HAVE PICKED UP THE  
21 PHONE AND ASKED COUNSEL THAT QUESTION.

22 MS. JENKINS: WE DID, YOUR HONOR.

23 THE COURT: OKAY. I FIGURED THERE WAS A REASON THAT  
24 WAS HERE. SO LET'S GET THAT WRAPPED UP HERE. IT'S 4:00 HERE  
25 ON THE WEST COAST, LET'S GET THAT WRAPPED UP BY 6.

1 OKAY. CALHOUN -- OH, I'M SORRY, MR. SCHAPIRO, WAS THERE  
2 ANYTHING ELSE FROM GOOGLE DEFENDANTS?

3 MR. SCHAPIRO: NO, YOUR HONOR.

4 THE COURT: OKAY.

5 AND CALHOUN PLAINTIFFS, ANY ISSUES? I MEAN, YOU'VE GOT  
6 THE ISSUES, I'M NOT OPENING IT UP TO NEW ISSUES. ANY QUESTIONS  
7 ABOUT WHERE WE ARE AND WHAT WE ARE DOING?

8 MR. STRAITE: I THINK WE ARE GOOD, YOUR HONOR.

9 THANK YOU FOR YOUR TIME AND SPECIAL MASTER'S TIME. BUT I  
10 THINK WE KNOW OUR MARCHING ORDERS AND OUR E-MAILS WE ARE  
11 SENDING AND OUR MEETINGS WE ARE HAVING THIS WEEK.

12 THE COURT: OKAY. ANYTHING FURTHER? OKAY.

13 AND FROM GOOGLE IN CALHOUN, MR. SHAPIRO?

14 MR. SCHAPIRO: NOTHING, YOUR HONOR.

15 WE JUST WANT TO COMMEND AND THANK SPECIAL MASTER BRUSH AND  
16 MR. SCHMIDT BECAUSE THEY HAVE REALLY PUT BLOOD, SWEAT AND TEARS  
17 INTO THIS, AND IT'S PROBABLY NOT MUCH FUN, BUT THEY HAVE  
18 MANAGED TO KEEP US ALL IN LINE. WE APPRECIATE IT.

19 THE COURT: OKAY. ALL RIGHT. AS I SAID, I WILL, IN  
20 ADDITION TO MY ORDERS OF TODAY, IN THE NEXT DAY OR TWO, ISSUE  
21 BRIEFING AND HEARING SCHEDULE, IT'S NOT GOING TO BE ON SHORT  
22 TIME, YOU'VE GOT ENOUGH TO DO IN VERY SHORT TIME ON THE BROWN  
23 MOTION THAT WAS FILED OVER THE WEEKEND.

24 OKAY. ALL RIGHT. THANK YOU ALL VERY MUCH. FOR THE NEWER  
25 LAWYERS WHO HAVEN'T HAD A CHANCE TO ARGUE AND WHOSE ISSUES DID

1 NOT COME UP OR I DID NOT ENTERTAIN ARGUMENT TODAY, BETTER TO BE  
2 PREPARED AND NOT CALLED ON THAN THE OTHER WAY AROUND. SO KEEP  
3 AT IT, AND I LOOK FORWARD TO HAVING YOU IN MY COURT LIVE IN THE  
4 NOT TOO DISTANT FUTURE.

5 ALL RIGHT. THANK YOU ALL VERY MUCH. THAT CONCLUDES OUR  
6 HEARING.

7 THANK YOU, MS. FISHER. THANK YOU, MS. FANTHORPE.

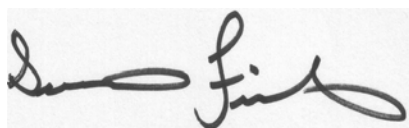
8 AND WE ARE ADJOURNED.

9 (THE PROCEEDINGS WERE CONCLUDED AT 4:07 P.M.)  
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**CERTIFICATE OF REPORTER**

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATED: 3/2/22